FILED
United States Court of Appeals
Tenth Circuit

August 18, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

DION ANTHONY,

Plaintiff - Appellant,

v.

COLORADO DEPARTMENT OF CORRECTIONS; COLORADO STATE PENITENTIARY; RAEANNE WILL,

Defendants - Appellees.

No. 22-1381
(D.C. No. 1:20-CV-01484-DDD-SKC)
(D. Colo.)

ORDER AND JUDGMENT*

Before **MATHESON**, **BACHARACH**, and **ROSSMAN**, Circuit Judges.

Dion Anthony, proceeding pro se, appeals the district court's dismissal of his 42 U.S.C. § 1983 action. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

I. BACKGROUND

Mr. Anthony, an inmate in the custody of the Colorado Department of Corrections ("CDOC") at the Colorado State Penitentiary ("CSP"), sued the CDOC, CSP, and Raeanne Will, a CSP disciplinary officer. His amended complaint alleged:

(1) Ms. Will violated his Fourteenth Amendment due process rights at his penal disciplinary hearing for destruction of property by (a) denying him his "cell inspection sheet," which allegedly would show that the property "damage was preexisting;" and (b) convicting him and ordering a $15.84 restitution deduction from his inmate bank account. ROA, Vol. I at 45.

(2) CSP violated his Sixth Amendment right to counsel by interfering with his legal mail and losing a box of his legal documents, which allegedly hampered his defense in a pending California criminal appeal.

(3) CDOC and CSP violated state and federal law for various reasons, including not promptly notifying him of pending criminal and disciplinary actions against him.

(4) Colo. Rev. Stat. § 16-18.5-106, a CDOC restitution statute, is unconstitutionally vague.

For relief, he sought an injunction prohibiting the CDOC and CSP from deducting restitution for disciplinary convictions from his inmate bank account, and he asked for monetary damages from Ms. Will.

The defendants moved to dismiss for lack of subject-matter jurisdiction and for failure to state a claim under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). The district court referred the motion to a magistrate judge, who recommended that the district court grant it and dismiss the case.

First, the magistrate judge determined the court lacked subject-matter jurisdiction over Mr. Anthony's claims (2) and (3) against the CDOC and CSP. He said those are effectively claims against the State of Colorado, the Eleventh Amendment grants immunity to the states, and Mr. Anthony's "claims against CDOC (and thereby CSP) are barred as a matter of law." ROA, Vol. III at 228.

Second, the magistrate judge concluded that Mr. Anthony failed to state a Fourteenth Amendment due process claim. He said that, even assuming Ms. Will afforded Mr. Anthony deficient process and that he had a property interest in the $15.84 sanction, Mr. Anthony alleged that he had (and availed himself of) an adequate post-deprivation remedy—namely, "Step Three of the CDOC administrative remedy process for inmate grievances." *Id.* at 233. And even though Mr. Anthony's Step-Three appeal was unsuccessful, he was afforded due process. The magistrate judge also determined that because Mr. Anthony did not allege personal participation by Ms. Will in any of his other claims, she was entitled to qualified immunity.

Third, the magistrate judge found that Mr. Anthony's void-for-vagueness challenge was inapplicable because § 16-18.5-106 "does not regulate any parties or entities such that they would need to know what is required of them." ROA, Vol. III at 235.

Mr. Anthony timely objected.

First, he objected to the dismissal of claims (2) and (3), arguing that qualified immunity protects government officials only if their conduct is not in violation of

clearly established statutory or constitutional rights. The court rejected the objection, pointing out that these claims were alleged only against the CDOC and CSP, and "are effectively claims against the State of Colorado[,] and are barred as a matter of law." *Id.* at 464.

Second, on his Fourteenth Amendment claims against Ms. Will, Mr. Anthony objected that he had a protectable property interest in the funds he received from outside sources. The court said that "[d]eprivation of [a] property interest does not violate the Fourteenth Amendment if a postdeprivation remedy is available," and concluded that due process was available to Mr. Anthony even though "he did not prevail in his grievance." *Id.*

Third, on his vagueness claim, Mr. Anthony objected that § 16-18.5-106 is unconstitutionally vague and implicates his rights because it allows the CDOC to take funds from inmate accounts. In overruling the objection, the court held the void-for-vagueness doctrine was inapplicable because § 16-18.5-106 did not regulate Mr. Anthony's conduct. Alternatively, the court determined that even if the doctrine applied, Mr. Anthony did not allege sufficient facts to state a claim.

Thus, the district court adopted the magistrate judge's recommendation, granted the motion, and dismissed the case. This appeal followed.

II. DISCUSSION

A. *Standards of Review*

We review de novo dismissals for lack of subject-matter jurisdiction under Rule 12(b)(1) and for failure to state a claim under Rule 12(b)(6). *Smith v. United States*, 561 F.3d 1090, 1097–98 (10th Cir. 2009). Under this standard, we accept as true all well-pleaded factual allegations and view them in the light most favorable to the plaintiff. *Id.* at 1098.[1]

B. *Challenges on Appeal*

On appeal, Mr. Anthony presents three arguments.

First, he contends the district court erred by dismissing claims (2) and (3) against the CDOC and CSP because "subject matter jurisdiction was not lacking as [he] asked a federal question of a state statute § 16-18.5-106(2)." Aplt. Br. at 4. This argument fails because the district court did not rule that it lacked subject-matter jurisdiction over Mr. Anthony's constitutional challenge to that statute.

Second, he argues the district court incorrectly determined Ms. Will was entitled to qualified immunity because "qualified immunity is not a defense to

[1] Because Mr. Anthony represents himself, we construe his filings liberally and hold them "to a less stringent standard than formal pleadings drafted by lawyers." *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005) (quotations omitted). Even so, we do not serve as his advocate. *Id.* Our liberal reading of Mr. Anthony's filings "does not relieve [him] of the burden of alleging sufficient facts on which a recognized legal claim could be based." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

liability pursuant to this section § 13-21-131." *Id.* at 5. This argument fails because Colo. Rev. Stat. § 13-21-131 is a *state* civil-rights statute, and Mr. Anthony brought a *federal* civil-rights claim under 42 U.S.C. § 1983 against Ms. Will.

Third, he challenges the district court's dismissal for failure to state a claim regarding his voidness challenge to Colo. Rev. Stat. § 16-18.5-106.[2] Having considered Mr. Anthony's arguments, we discern no reversible error in the district court's decision and affirm for substantially the same reasons stated by the district court in its thorough and well-reasoned decision.

III. **CONCLUSION**

We affirm the district court's judgment dismissing Mr. Anthony's amended complaint. We deny Mr. Anthony's motion for leave to proceed without prepayment of costs and fees.

Entered for the Court

Scott M. Matheson, Jr.
Circuit Judge

[2] In his opening and reply briefs, Mr. Anthony makes new factual allegations that appear nowhere in his amended complaint. We decline to consider these new allegations as we "are limited to assessing the legal sufficiency of the allegations contained within the four corners of the complaint." *Jojola v. Chavez*, 55 F.3d 488, 494 (10th Cir. 1995).