

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

August 28, 2026

Christopher M. Wolpert
Clerk of Court

CLARENCE WAYNE SEELEY, III,

Plaintiff - Appellant,

v.

DEPUTY STEPHEN CREWS, State
Official,

Defendant - Appellee.

No. 26-1266
(D.C. No. 1:26-CV-00029-LTB-RTG)
(D. Colo.)

ORDER AND JUDGMENT*

Before **PHILLIPS, KELLY**, and **FEDERICO**, Circuit Judges.

Clarence Seeley III, proceeding pro se, appeals the dismissal of his 42 U.S.C. § 1983 lawsuit against a prison guard.¹ The district court sua sponte dismissed the suit under Federal Rule of Civil Procedure 41(b) for failure to

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially help decide 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 This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. But it may be cited for its persuasive value consistent with Federal Rule of Appellate Procedure 32.1 and Tenth Circuit Rule 32.1.

¹ Because Seeley proceeds pro se, we liberally construe his arguments but do not act as his advocate. *See Greer v. Moon*, 83 F.4th 1283, 1292 (10th Cir. 2023).

comply with Rule 8's pleading requirements. But Seeley never objected to the magistrate judge's recommendation. So under the firm waiver rule, he's waived appellate review.

Seeley also seeks to proceed in forma pauperis (IFP). And he filed another document requesting transcripts of unknown proceedings and notification of filing dates.

Exercising jurisdiction under 28 U.S.C. § 1291, we affirm the district court, grant Martinez's IFP motion, and deny as moot his motion seeking transcripts and filing dates.

BACKGROUND

Seeley is incarcerated at Sterling Correctional Facility in Sterling, Colorado. According to his complaint, when he was incarcerated at Denver Downtown Detention Center in Denver, Colorado, a corrections officer intentionally left open Seeley's cell door so racist inmates could attack him. So Seeley sued the corrections officer, Stephen Crews, under § 1983 for violating his Eighth and Fourteenth Amendment rights. He sought \$3,000,000 in compensatory damages, as well as punitive damages and an injunction ensuring that his future rights are protected.

A magistrate judge ordered Seeley to amend his complaint to remedy pleading deficiencies. The magistrate judge ordered Seeley to "make clear who did what to whom," clarify whether he was alleging claims against the City and County of Denver, and explain whether his transfer to Sterling Correctional

Facility mooted his request for an injunction. But Seeley never filed an amended complaint, so the magistrate judge recommended that Seeley's claims be dismissed under Rule 41(b) for failure to comply with Rule 8.

The magistrate judge advised Seeley that he had to file objections within fourteen days or risk waiving appellate review. Seeley never filed objections. So the district judge adopted the magistrate judge's recommendation and dismissed Seeley's complaint under Rule 41(b) for failure to comply with Rule 8's pleading requirements. Seeley then filed a timely notice of appeal, arguing that mail and communication issues prevented his filing objections on time.

DISCUSSION

“We review dismissals under Rule 41(b) for abuse of discretion.”

Nasious v. Two Unknown B.I.C.E. Agents, 492 F.3d 1158, 1161 (10th Cir. 2007). “A district court abuses its discretion when it issues an arbitrary, capricious, whimsical, or manifestly unreasonable judgment.” *Prairie Band Patawatomie Nation v. Wagnon*, 476 F.3d 818, 822 (10th Cir. 2007).

I. Appeal

Seeley argues that the district court erred by dismissing his complaint under Rule 41(b).

“[W]e have adopted a firm waiver rule when a party fails to object to the findings and recommendations of the magistrate.” *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991). Failing to make timely and specific objections to a magistrate judge's report and recommendation waives appellate review of

both the factual and legal questions. *Nelson v. United States*, 40 F.4th 1105, 1109 (10th Cir. 2022). The firm waiver rule has two exceptions: (1) when a pro se litigant “has not been informed of the time period for objecting and the consequences of failing to object,” and (2) when “the interests of justice require review.” *Morales-Fernandez v. INS*, 418 F.3d 1116, 1119 (10th Cir. 2005) (citation modified).

The magistrate judge’s May 26, 2026, order notified Seeley of his fourteen-day deadline to file objections. Because the magistrate judge’s report was filed by mail, Seeley had three extra days. *See* Fed. R. Civ. P. 6(d). So Seeley needed to deliver his objections to prison officials by June 12. *See Theede v. U.S. Dep’t of Lab.*, 172 F.3d 1262, 1266 (10th Cir. 1999); *United States v. Clingman*, 288 F.3d 1183, 1185 (10th Cir. 2002). But Seeley never objected.

Seeley argues that he did file objections on time, but they were never delivered. He claims he has a record of his attempt to mail his objections, and that he is “being retaliated upon.” Dkt. No. 4, at 1. But Seeley doesn’t provide that record or the objections he tried to file. Without those records, we can’t say whether he tried to comply or whether this explanation for failing to comply is plausible. *See Nasious v. Robinson*, 396 F. App’x 526, 529 (10th Cir. 2010). So he hasn’t shown that the interest-of-justice exception applies. Thus, the firm waiver rule applies, and we won’t consider Seeley’s arguments.

II. IFP Motion

Seeley asks to proceed IFP on appeal. To proceed IFP, he “must comply with the filing requirements and demonstrate a financial inability to pay the required filing fees and the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal.” *Watkins v. Leyba*, 543 F.3d 624, 627 (10th Cir. 2008) (citation modified). Seeley shows no assets or income. And though the firm waiver rule bars his arguments, they are not frivolous. So we grant his IFP motion and permit him to proceed IFP. But Seeley nevertheless must continue making partial payments until the filing fee is paid in full. *See* 28 U.S.C. § 1915(b)(1)–(2); *Strope v. Cummings*, 653 F.3d 1271, 1273 (10th Cir. 2011).

III. Motion for Relief

Seeley filed another document that the clerk’s office styled a “motion for relief.” In that document, Seeley requests various transcripts and records, and asks the clerk’s office to notify him of filing dates. It’s not clear what transcripts or records he requests. Regardless, because we affirm the district court, we deny Seeley’s motion as moot.

CONCLUSION

We affirm the district court's dismissal of Seeley's complaint, grant Seeley's IFP motion, and deny as moot his motion for relief.

Entered for the Court

Gregory A. Phillips
Circuit Judge