

April 24, 2012

UNITED STATES COURT OF APPEALS

Elisabeth A. Shumaker
Clerk of Court

TENTH CIRCUIT

KEITH CLAYTON BROOKS, JR.,
and all others similarly situated,

Plaintiff - Appellant,

v.

ANGEL MEDINA, Warden; TRAVIS
TRANNI, Warden; FRANCIS
MASSENGILL, Associate Warden;
PAUL AUET, Lieutenant; KEN
SOKOL, Lieutenant; FOX, Lieutenant;
BRYAN MILBURN, Lieutenant;
JACKSON, Lieutenant; ANTHONY
DECESARO, Step 3 Grievance
Officer,

Defendants - Appellees.

No. 11-1549

(D. Colorado)

(D.C. No. 1:11-CV-01604-LTB)

ORDER AND JUDGMENT*

Before **MURPHY, ANDERSON, and HARTZ**, Circuit Judges.

*After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist 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 This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

Keith Brooks, a Colorado prisoner proceeding pro se, appeals the decision of the United States District Court for the District of Colorado dismissing as frivolous his complaint brought under 42 U.S.C. § 1983. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

Mr. Brooks's amended complaint focused on the difference in treatment accorded prisoners at Colorado's Limon Correctional Facility depending on whether they were in the Incentive Unit (IU) program. He alleged that as a prisoner not in the IU program he was denied due process and equal protection and was subjected to cruel and unusual punishment because of his reduced access to various amenities and exercise opportunities. The district court fully explained why there is no merit to the amended complaint, and we need not repeat its analysis. On appeal Mr. Brooks further asserts that the district court erred in not permitting him to amend the complaint. But he fails to explain what he would have added that would constitute a proper cause of action.

Accordingly, we AFFIRM the judgment below and assess a strike against Mr. Brooks. We DENY Mr. Brooks's motion to proceed without prepayment of costs or fees and order him to remit the full amount of the filing fee immediately.

We remind him of his obligation to pay the filing fee even on an appeal that has been dismissed.

ENTERED FOR THE COURT

Harris L Hartz
Circuit Judge