

UNITED STATES COURT OF APPEALS December 14, 2017
TENTH CIRCUIT Elisabeth A. Shumaker
Clerk of Court

TYRONE HURT,

Plaintiff - Appellant,

and

AFRICAN AMERICANS,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant - Appellee.

No. 17-6138
D.C. No. 5:17-CV-00477-R
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **KELLY, MURPHY, and MATHESON**, Circuit Judges.

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*This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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

Proceeding pro se, Tyrone Hurt appeals the district court's dismissal of the complaint he filed pursuant to 42 U.S.C. § 1981. The complaint was dismissed without prejudice when Hurt failed to comply with the district court's order to file a legible amended complaint clarifying the claims being asserted. Hurt's appellate brief, like his complaint, is nearly illegible. It focuses on Hurt's request to proceed in forma pauperis and contains no clear argument as to why the district court's judgment should be reversed.

Having reviewed the record and Hurt's appellate filings, this court concludes Hurt's appeal is "without merit in that it lacks an arguable basis in either law or fact." *Thompson v. Gibson*, 289 F.3d 1218, 1222 (10th Cir. 2002). We, thus, dismiss the appeal as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). *See Lister v. Dep't of Treasury*, 408 F.3d 1309, 1312 (10th Cir. 2005) (noting § 1915 applies to all litigants seeking to proceed in forma pauperis). We also deny Hurt's motion to proceed in forma pauperis and remind him of his responsibility to make immediate payment of any unpaid balance of the appellate filing fee.

ENTERED FOR THE COURT

Michael R. Murphy
Circuit Judge