

**UNITED STATES COURT OF APPEALS**  
**TENTH CIRCUIT**

**JAN 30 2003**

**PATRICK FISHER**  
Clerk

FELICIO OSTUNI,

Plaintiff - Appellant,

v.

SERGEANT FOSTER; OFFICER  
WILLIAMS; DET. DAVID OLLILA;  
DET. DAVID LUCERO; CHIEF  
GERALD WHITMAN; DEPUTY  
MAYOR STEPHANIE FOOTE; and  
MAYOR WELLINGTON WEBB,

Defendants - Appellees.

No. 02-1239  
D.C. No. 02-Z-492  
(D. Colorado)

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**ORDER AND JUDGMENT\***

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Before **EBEL**, **LUCERO** and **HARTZ**, Circuit Judges.

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Plaintiff Felicio Ostuni (“Plaintiff”) is currently incarcerated at the Sterling, Colorado, Correctional Facility. On March 13, 2002, he filed this pro se

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\*After examining appellant’s brief and the 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) and 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

civil rights complaint under 42 U.S.C. § 1983. He alleged, inter alia, that members of the Denver Police Department and other city officials violated his Fourth and Fourteenth Amendment rights during an investigation that resulted in his conviction and current incarceration.

In an Order and Judgment filed May 13, 2002, the district court dismissed Plaintiff's complaint and entered judgment in favor of all Defendants. To the extent that Plaintiff was attempting to use his § 1983 action to invalidate the criminal conviction for which he was currently incarcerated, the district court ruled that such a claim is barred by Heck v. Humphrey, 512 U.S. 477 (1994). It dismissed that claim without prejudice. The district court also dismissed Plaintiff's harassment claim against Defendants Foster, Williams, Ollila and Lucero, finding that claim legally frivolous because of Plaintiff's failure to "state a claim that rises to the level of a constitutional deprivation." (Slip Op. at 2.)

On June 5, 2002, the district court denied Plaintiff's motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 and Fed. R. App. P. 24, finding that Plaintiff's arguments were frivolous and that his appeal was not taken in good faith. Plaintiff then filed an ifp motion with this Court.

After a full review of the record, we GRANT Plaintiff's motion to proceed in forma pauperis and AFFIRM the dismissal of his complaint for substantially the reasons stated by the district court in its May 13, 2002, Order and Judgment.

ENTERED FOR THE COURT

David M. Ebel  
Circuit Judge