

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

DEC 19 2003

PATRICK FISHER
Clerk

EDDIE DEAN FLUKER,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA;
ROBERT A. HOOD; HARLEY
LAPPIN; R. DERR; J.M.
BELLANTONI; JOHN ASHCROFT;
P. TELITZ; JOHN SHERIDAN; K.
LITVAN,

Defendants-Appellees.

No. 03-1271
(Colorado)
(D.Ct. No. 03-Z-719)

ORDER AND JUDGMENT DISMISSING FRIVOLOUS APPEAL

Before **SEYMOUR, MURPHY, and O'BRIEN**, Circuit Judges.

Eddie Dean Fluker, a federal prisoner, filed complaints¹ against the United States and its officers or employees, seeking damages and injunctive relief. The district court concluded his complaints were legally frivolous and dismissed them pursuant to 28 U.S.C. § 1915A(b). He appeals, pro se.² Like the original

¹He filed two complaints, both asserting the same three claims.

²We construe pro se pleadings liberally. *Ledbetter v. City of Topeka*, 318 F.3d 1183, 1187 (10th Cir. 2003).

complaints, the appeal is frivolous and we dismiss it. 28 U.S.C. § 1915(e)(2)(B)(i).

Relying on *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), and the Federal Tort Claims Act, 28 U.S.C. §§ 2671-80, Fluker claims: 1) he was denied access to the courts because the prison does not have Colorado legal research materials, which he needs to pursue a medical malpractice claim, and 2) one defendant refused to photocopy certain documents for him. He also raises claims asserting he was retaliated against by various defendants when they filed fraudulent incident reports against him in violation of his constitutional rights.

We conclude Mr. Fluker's appeal is frivolous. We adopt the reasoning of the district court and **DISMISS** the appeal as frivolous. The dismissal of this appeal, combined with the district court's dismissal of his complaint as frivolous, means Mr. Fluker has accumulated two strikes under 28 U.S.C. § 1915(g).³

Entered by the Court:

TERRENCE L. O'BRIEN
United States Circuit Judge

³“In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted” 28 U.S.C. § 1915(g).