

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

April 9, 2007

Elisabeth A. Shumaker
Clerk of Court

MICHAEL LEE STROPE, also known
as Gordon E. Strobe,

Plaintiff - Appellant,

v.

DAVID R. McKUNE, Warden,
Lansing Correctional Facility; JASON
SUTTLEY, Officer, Lansing
Correctional Facility; TABOR
MEDILL, Counselor, Lansing
Correctional Facility; R. SUTTLES,
Counselor, Lansing Correctional
Facility; FRANK DORION, Kitchen
Manager, Lansing Correctional
Facility; DUANE MUCKENTHALER,
Counselor, Lansing Correctional
Facility; COLLETTE
WINKELBAUER, Classification Staff,
Lansing Correctional Facility; ANN
MCDOWELL, Lansing Correctional
Facility; WILLIAM CUMMINGS,
Assistant for the Secretary of
Corrections; MIKE NEVE, Deputy
Warden, Lansing Correctional Facility,
in their individual capacities,

Defendants - Appellees.

No. 05-3344
(D.C. No. 04-CV-3204-JTM)
(D. Kan.)

ORDER AND JUDGMENT*

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

Before **KELLY, O'BRIEN, and TYMKOVICH**, Circuit Judges.**

Plaintiff-Appellant Michael Lee Strobe, a state inmate appearing pro se, appealed the district court's dismissal of his civil rights action against State corrections personnel, without prejudice, and the denial of his motion to reconsider. The district court's dismissal was predicated on a "total exhaustion" requirement for § 1983 suits involving prison conditions. See 42 U.S.C. § 1997e(a); Ross v. County of Bernalillo, 365 F.3d 1181, 1189-90 (10th Cir. 2004), overruled by Jones v. Bock, 127 S. Ct. 910 (2007); Steele v. Fed. Bureau of Prisons, 355 F.3d 1204, 1211 (10th Cir. 2003), overruled by Jones v. Bock, 127 S. Ct. 910 (2007); see also Freeman v. Watkins, –F.3d–, 2007 WL 779273, at *2 (10th Cir. 2007) (noting that Jones v. Bock overruled Ross and Steele); Aquilar-Avellaveda v. Terrell, 478 F.3d 1223 (10th Cir. 2007) (same). We affirmed, noting that it appeared that Mr. Strobe had not exhausted all of his claims when he filed his complaint and that evidence concerning his attempts to exhaust came too late given summary judgment proceedings. Strobe v. McKune, No. 05-344, 2006 WL 246138, at *1 (10th Cir. Feb. 2, 2006), vacated 127 S. Ct.

** After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1(G). The cause is therefore ordered submitted without oral argument.

1215 (2007). The Supreme Court vacated our judgment for reconsideration in light of Jones v. Bock and we recalled our mandate. We now reverse the district court's orders dismissing and denying reconsideration and remand this case for reconsideration in light of Jones v. Bock.

We remind Mr. Strobe that he must continue to make partial payments until the entirety of his appellate filing fee balance is paid.

REVERSED. The district court's orders dismissing the action and denying reconsideration are VACATED, and the case is REMANDED, for proceedings consistent with this Order and Judgment.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge