

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

August 4, 2006

Elisabeth A. Shumaker
Clerk of Court

DENNIS LEON SMITH,
Plaintiff-Appellant,

v.

LARRY PORTER, Public Minister,
Defendant-Appellee.

No. 06-1049

(D.C. No. 05-CV-02269 ZLW)

(D. Colo.)

ORDER AND JUDGMENT*

Before **KELLY, McKAY, and LUCERO**, Circuit Judges.

After examining the briefs and the appellate record, this panel has determined unanimously that oral argument would not materially assist in the resolution of this appeal. *See* Fed. R. App. P. 34(a)(2). The case is therefore ordered submitted without oral argument.

Mr. Smith filed a complaint against Appellee, an assistant district attorney for Baca County, Colorado. Although Mr. Smith's pro se allegations are difficult to interpret, it seems that his complaint alleges constitutional violations in connection with various traffic incidents. It appears that Mr. Smith's previous

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

appeal to this court, which was dismissed on September 8, 2004, involved the same events as the present appeal. *See Smith v. Nieschburg*, 107 Fed. Appx. 885 (10th Cir. 2004).

In the instant action, Mr. Smith filed a complaint with the district court on October 27, 2005. The magistrate judge generously commenced a civil action “although the merits of Mr. [Smith’s] Notice are questionable” and instructed him to file his claims on a court-approved form and either pay the filing fee or submit a motion to proceed in forma pauperis. Order and Judgment of Dismissal, 1 (D. Colo. Jan. 10, 2006). On November 16, Mr. Smith filed his claims on a court-approved form but neglected to pay the filing fee or submit a motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. In his motion, Mr. Smith argues strangely that the district court lacks jurisdiction and requests that the court dismiss for lack of jurisdiction. He also filed a Writ of Mandamus. The district court dismissed his complaint and action for failure to cure the defects, as requested by the magistrate judge. Order and Judgment of Dismissal, at 2.

Mr. Smith then filed a letter with the district court on January 20, 2006, which the court construed as a Motion to Reconsider. Order Denying Motion to Reconsider, 1 (D. Colo. Feb. 15, 2006). The district court denied this motion. Finally, the district court, applying 28 U.S.C. § 1915, denied Mr. Smith leave to appeal. *See* Order (D. Colo. Feb. 27, 2006). While we have not determined whether the standard of review of an order denying leave to appeal under § 1915

is de novo or abuse of discretion, we would reach the same decision under either standard in this case. *See Plunk v. Givens*, 234 F.3d 1128, 1130 (10th Cir. 2000).

We have carefully reviewed Mr. Smith's brief, the magistrate judge's order, the district court's orders, and the record on appeal, and for substantially similar reasons to the those laid out by the district court in its January 10, 2006, February 15, 2006, and February 27, 2006, orders, we **AFFIRM** the district court's dismissal of Mr. Smith's spurious claim and the district court's denial of leave to appeal. We **DENY** Mr. Smith's motion to proceed in forma pauperis and remind him of his obligation to pay filing fees and to respect the business of this court.

Entered for the Court

Monroe G. McKay
Circuit Judge