

UNITED STATES COURT OF APPEALS

**Filed 4/16/96**

TENTH CIRCUIT

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VINCENT LEON TUBBS,

Plaintiff - Appellant,

v.

LISA WAYNE,

Defendant - Appellee.

No. 95-1191  
(D. Ct. No. 95-S-466)  
(D. Colo.)

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**ORDER AND JUDGMENT\***

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Before TACHA, BALDOCK, and BRISCOE, Circuit Judges.

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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. 34.1.9. The cause is therefore ordered submitted without oral argument.

This appeal is from an order of the district court dismissing pro se appellant's civil rights complaint brought pursuant to 42 U.S.C. § 1983 (1994) on the grounds that the complaint is legally frivolous. Appellant appeals on the ground that the district court

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\*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

erred in failing to find that appellee deprived him of his constitutional rights when she provided ineffective assistance of counsel and allegedly utilized perjured testimony in representations before the court in obtaining a plea agreement. We affirm.

We agree with the district court that this record is clear that the appellee, Ms. Wayne, was the public defender representing the plaintiff in state court on his criminal charges and was acting in the scope of her duties as a public defender. Public defenders serve in the traditional role of an attorney for a defendant in a criminal proceedings and are not presumed to act under the color of state law. Therefore, they cannot be sued under 42 U.S.C. § 1983. Polk County v. Dodson, 454 U.S. 312 (1981). In this action, appellant has sued for 2 million dollars and a combination of punitive and “injunctive” damages. We agree with the district court that the basis for the filing of the complaint is frivolous and that there is no basis for the appeal. Therefore, we **AFFIRM** the order of the district court dismissing this complaint pursuant to 28 U.S.C. § 1915(d).

The mandate shall issue forthwith.

ENTERED FOR THE COURT

Deanell Reece Tacha  
Circuit Judge