

UNITED STATES COURT OF APPEALS  
TENTH CIRCUIT

**Filed 8/21/96**

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JAMES C. HOGAN,

Plaintiff-Appellant,

v.

ARI ZAVARAS, JEANEENE MILLER,  
WILLIAM BOYER, MAURICE LLOYD,  
DAVID HOLESTINE, ANA GARCIA;  
GALE NORTON, Attorney General of  
Colorado,

Defendants-Appellees.

No. 95-1539  
(D.C. No. 95-D-369)  
(D. Colo.)

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ORDER AND JUDGMENT \*

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Before TACHA, BALDOCK, and BRISCOE, Circuit Judges.\*\*

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Plaintiff James C. Hogan, appearing pro se, appeals the district court's order entering summary judgment in his 42 U.S.C. § 1983 civil rights action. We exercise jurisdiction under 28 U.S.C. § 1291 and affirm.

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

\*\* After examining the briefs 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); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

Plaintiff, a convicted felon in the custody of the Colorado Department of Corrections, was given the opportunity to participate in a community-based release program called the Intensive Supervision Program (“ISP”). As a condition of the ISP, Plaintiff had to participate in a mental health treatment program. Plaintiff failed to attend a scheduled therapy session and received a Code of Penal Discipline (“COPD”) conviction. Subsequently, Plaintiff was removed from the ISP and placed in a Colorado Department of Corrections facility.

Plaintiff filed a § 1983 action against Defendants for alleged Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendment violations arising from the COPD conviction and removal from the ISP. Defendants moved for summary judgment and to dismiss. After de novo review, the district court adopted the magistrate’s recommendation, and granted Defendants’ motion for summary judgment and motion to dismiss.

On appeal, Plaintiff contends the district court erred in entering summary judgment against him. Plaintiff asserts: (1) the district court improperly resolved disputed issues of material fact; (2) he adequately alleged a denial of due process; and (3) Defendant Ana Garcia violated his Fifth and Eighth Amendment rights.

We have reviewed the briefs of the parties, the magistrate’s recommendation, the district court’s order, and carefully examined the entire record on appeal. Based upon our

review of the record, we find no reversible error and AFFIRM for substantially the reasons set forth in the magistrate's recommendation.<sup>1</sup>

AFFIRMED.

Entered for the Court,

Bobby R. Baldock  
Circuit Judge

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<sup>1</sup> We deny Plaintiff's Motion to Strike State Defendant's Answer Brief.