

UNITED STATES COURT OF APPEALS

Filed 6/3/96

TENTH CIRCUIT

ANTHONY RAY JENKINS,)

Plaintiff-Appellant,)

v.)

BILL MCBRIDE, RON GRANT, JIM PEAK)
and ANDY BELL,)

Defendants-Appellees.)

No. 95-3224
(D.C. No. 94-CV-3128)
(D. Kansas)

ORDER AND JUDGMENT*

Before **ANDERSON, BARRETT** and **LOGAN**, Circuit Judges.

This matter is before the court on plaintiff Anthony Ray Jenkins' motion for leave to proceed in forma pauperis on appeal without payment of costs or fees.

To succeed on his motion plaintiff must show both the financial inability to pay the required filing fees and the existence of a reasoned, nonfrivolous argument on the law and

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

facts in support of the issues raised on appeal. See 28 U.S.C. § 1915(d); Coppedge v. United States, 369 U.S. 438 (1962); Ragan v. Cox, 305 F.2d 58 (10th Cir. 1962).

Plaintiff seeks to appeal the dismissal of his 42 U.S.C. § 1983 complaint against six individuals who testified as prosecution witnesses in state criminal proceedings against him. He alleges violations of his rights to free speech and privacy, and due process and Fifth Amendment guarantees. Plaintiff's allegations are conclusory and lack the necessary specificity to state a § 1983 claim. He essentially requests habeas corpus relief that is not available under § 1983. The district court dismissed the action, recognizing the defendants enjoy absolute immunity for their actions as witnesses.

Also pending before us is plaintiff's declaratory judgment motion to have these proceedings declared to be a proper § 1983 action. In light of our dismissal of this appeal, plaintiff's motion for declaratory judgment is dismissed as moot.

We conclude the plaintiff can make no rational argument on the law or facts in support of the issues raised on appeal. Therefore, the motion for leave to proceed on appeal without prepayment of costs or fees is denied. The appeal is DISMISSED.

The mandate shall issue forthwith.

Entered for the Court

James K. Logan
Circuit Judge