

**UNITED STATES COURT OF APPEALS Filed 5/8/96**

TENTH CIRCUIT

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WILLIAM LUCKY LENHART, )  
 )  
 Plaintiff-Appellant, )  
 )  
 v. )  
 )  
 LARRY A. FIELDS and R. MICHAEL CODY, )  
 )  
 Defendants-Appellees. )

No. 95-6334  
(D.C. No. CIV-94-2108-M)  
(W. D. Oklahoma)

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ORDER & JUDGMENT\*

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Before ANDERSON, BARRETT and LOGAN, Circuit Judges.

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After examining the briefs and 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.

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

Plaintiff pro se William Lucky Lenhart, an inmate in the Lexington [Oklahoma] Correctional Facility, appeals from the district court's grant of summary judgment against him in his 42 U.S.C. § 1983 action alleging that officials of the Oklahoma Department of Corrections violated his Fifth, Eighth, and Fourteenth Amendment rights. Plaintiff primarily raises an Eighth Amendment cruel and unusual punishment claim, contending that defendants were aware that he suffers from a serious lung ailment (emphysema) and "that smoke of any kind seriously endangers [his] health and life span," I R. doc. 2 at 4. He asserts defendants have acted with deliberate indifference towards his rights by failing to provide him with a nonsmoking environment. Prison officials have given plaintiff a nonsmoking cellmate and offered placement in the infirmary if needed. They also have adopted regulations making portions of the prison smoke-free. Plaintiff contends, however, the nonsmoking regulations are not being enforced sufficiently, and he asks that smoking be prohibited in the entire prison.

The district court granted summary judgment in favor of defendant officials based on the magistrate judge's report and recommendation. We have reviewed the briefs and the record and cannot add significantly to the analysis in the magistrate judge's recommendation of July 20, 1995, which was adopted by the district court. We therefore AFFIRM for substantially the reasons stated therein.

The mandate shall issue forthwith.

Entered for the Court

James K. Logan  
Circuit Judge