

UNITED STATES COURT OF APPEALS

Filed 6/26/96

TENTH CIRCUIT

ROBERT WOJTKIEWICZ,

Plaintiff-Appellant,

vs.

ARISTEDES W. ZAVARAS, Executive
Director, Colorado Department of
Corrections; ROBERT HICKOX,
Superintendent, Delta Correctional
Center; SUE WORTHINGTON, CLYDE
STAHL, GARTH YERGENSEN, MARY
WHITE, JACK LONIS, RON BONINE,
VERN NEUBERGER, Delta Correctional
Center, all in their individual capacities,

Defendants-Appellees.

No. 96-1051
(D.C. No. 95-S-2483)
(D. Colo.)

ORDER AND JUDGMENT*

Before SEYMOUR, Chief Judge, KELLY, and LUCERO, Circuit Judges.**

Mr. Wojtkiewicz appeals from the dismissal of his civil rights complaint and

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

** 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.

action brought pursuant to 42 U.S.C. § 1983. He alleges that his placement on restricted privileges “Level B” status violated his due process rights and constituted cruel and unusual punishment under the Eighth Amendment. It is clear, however, that neither the Colorado Revised Statute cited nor the Due Process Clause provide Mr. Wojtkiewicz the necessary liberty interest to support his due process claim. See Sandin v. Conner, 115 S.Ct. 2293 (1995); Templeman v. Gunter, 16 F.3d 367, 369 (10th Cir. 1994). Moreover, Mr. Wojtkiewicz’s allegations regarding the limitation of his activities do not meet the objective and subjective components which must be present to maintain an action predicated upon a violation of the Eighth Amendment. See Wilson v. Seiter, 501 U.S. 294, 298 (1991). We need not address the argument raised in Mr. Wojtkiewicz’s brief regarding whether defendants are sued in their official or individual capacity as we have determined that the claims raised lack merit.

AFFIRMED. We GRANT Mr. Wojtkiewicz’s Motion for Leave to Proceed on Appeal Without Prepayment of Costs or Fees. The mandate shall issue forthwith.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge