

UNITED STATES COURT OF APPEALS

Filed 6/3/96

TENTH CIRCUIT

GEORGE T. HOWELL, III,	)	
	)	
Petitioner-Appellant,	)	
	)	
v.	)	No. 96-1074
	)	(D.C. No. 95-Z-2223)
J.W. BOOKER, Warden,	)	(Dist. of Colo.)
	)	
Respondent-Appellee.	)	

ORDER AND JUDGMENT\*

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

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); Tenth Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

George T. Howell, III (Howell), an inmate of the Federal Correctional institute, in Florence, Colorado, appearing pro se, appeals from the district court's order accepting and adopting the United States Magistrate Judge's Recommendation and dismissing

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\*This Order and Judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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 Tenth Cir. R. 36.3.

without prejudice Howell's petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2241. The court granted Howell leave to file a 28 U.S.C. § 2255 motion in the United States District Court for the Northern District of Illinois.

Howell filed this action under 28 U.S.C. § 2241 challenging the validity of his conviction in the United States District Court for the Northern District of Illinois. The magistrate judge and the district court ruled that Howell may attack that conviction only in the district court that rendered the conviction. The district court further ruled that Howell's claims pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971) must be dismissed because there are no allegations in the record that would allow the court to exercise personal jurisdiction over the defendants residing in the State of Illinois.

On appeal, Howell contends that the district court abused its discretion in denying his petition for relief. He argues that he has already presented his argument to the federal district court in Illinois and that court ruled that he was procedurally barred because he had not raised the claims prior to trial under Fed. R. Crim. P. 12(b)(2).

We are obliged to construe pro se pleadings liberally. Haines v. Kerner, 404 U.S. 519, 520-21 (1972). On appeal, we will uphold a dismissal under Fed. R. Civ. P. 12(b)(6) only when it appears

that the plaintiff can prove no set of facts in support of the claims that would entitle the plaintiff to relief, accepting all of the well-pleaded allegations of the complaint as true. Roman v. Cessna Aircraft Co., 55 F.3d 542, 543 (10th Cir. 1995).

We affirm the district court substantially for the reasons set forth in the "Recommendation of United States Magistrate Judge" dated and entered October 2, 1995.

Entered for the Court:

James E. Barrett,  
Senior United States  
Circuit Judge