

UNITED STATES COURT OF APPEALS

FEB 6 1997

TENTH CIRCUIT

PATRICK FISHER
Clerk

CHARLES GREENWELL,)
)
Plaintiff-Appellant,)
)
v.)
)
COLORADO DEPARTMENT OF)
CORRECTIONS, in its official capacity)
for the purpose of preliminary injunction)
only pursuant to Rule 65 FRCP;)
ARISTEDES ZAVARAS, Executive)
Director of the Colorado Department of)
Corrections in his official capacity for the)
purpose of preliminary injunction, pursuant)
to Rule 65 of FRCP; MARK MCKINNA,)
Warden/Superintendent of the Colorado)
Territorial Correctional Facility in his)
individualized personal capacity; N. CLARR,)
Major at the Colorado Territorial Correc-)
tional Facility, in his individualized)
personal capacity; GLORIA MASTERSON,)
Disciplinary Appellate Officer at Colorado)
Territorial Correctional Facility in her)
individualized personal capacity;)
DENNIS DEAN, Lt., Disciplinary Hearing)
Officer at the Colorado Territorial Correc-)
tional Facility, in his individualized per-)
sonal capacity; JOE GIGANTI, Captain,)
Cellhouse One Disciplinary Officer at the)
Colorado Territorial Correctional Facility,)
in his individualized personal capacity;)
JAMES COWAN, Lieutenant at the)
Colorado Territorial Correctional Facility)
and initiating employee of disciplinary)
action in his individualized personal)

No. 96-1242
D.C. No. 95-S-2597)
(Dist. Colo.)

capacity and unknown John and/or Jane)
Does at the Colorado Territorial Correc-)
tional Facility, in his/her individualized)
personal capacity,)
)
Defendants-Appellees.)

ORDER AND JUDGMENT*

Before **SEYMOUR**, Chief Judge, **PORFILIO** and **MURPHY**, Circuit Judges.

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 cause is therefore ordered submitted without oral argument.

Plaintiff Charles Greenwell appeals from the district court’s dismissal of his civil rights complaint under 42 U.S.C. § 1983 against the Colorado Department of Corrections and various corrections officials. Mr Greenwall asserts that the district court abused its discretion in refusing to further extend the time for him to respond to the Martinez report filed by defendants and by dismissing his complaint as frivolous under 28 U.S.C. § 1915(d).

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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 10th Cir. R. 36.3.

We have reviewed the record in light of the arguments Mr. Greenwell makes in his briefs on appeal. We are not persuaded the district court abused its discretion in denying Mr. Greenwell's motion for a second extension of time to respond to the Martinez report. This is so in part because Mr. Greenwell has not provided us with a convincing argument that filing a response to the report would have resulted in a different outcome. Rather, we are convinced by the district court's analysis of the merits that Mr. Greenwell was provided with all the process in his disciplinary hearing that he was constitutionally due, and that he failed to provide a factual basis for an equal protection claim. With respect to the due process claim, we note that the hearing officer at the disciplinary hearing was entitled to believe a threat occurred despite the discrepancy in the testimony of the victim and Lt. Cowan about the date of the threat.

Substantially for the reasons stated in the Order of Dismissal filed April 25, 1996, we AFFIRM the judgment of the district court dismissing this action under section 1915(d).

ENTERED FOR THE COURT

Stephanie K. Seymour
Chief Judge