

UNITED STATES COURT OF APPEALS

Filed 3/19/96

TENTH CIRCUIT

CARL EUGENE HOWARD,)	
)	
Plaintiff-Appellant,)	
)	
vs.)	No. 96-3000
)	(D.C. No. 95-CV-3514)
MICHAEL A. NELSON, Warden,)	(D. Kan.)
D. DONLEY, Unit Team/Hearing Officer,)	
K. DUTTON, CSI - Correctional Officer,)	
and THE STATE OF KANSAS,)	
)	
Defendants-Appellees.)	

ORDER AND JUDGMENT*

Before TACHA, BALDOCK, and BRISCOE, Circuit Judges.**

Plaintiff Carl Eugene Howard, appearing pro se, appeals the district court's dismissal of his 42 U.S.C. § 1983 complaint for failure to state a claim under Fed. R. Civ.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

** 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 therefore is submitted without oral argument.

P. 12(b)(6). We have jurisdiction under 28 U.S.C. § 1291.

Plaintiff alleges that he was disciplined after an administrative hearing with a twenty dollar fine and a reduction in good-time credits.¹ According to Plaintiff, the evidence presented at the hearing was insufficient to support the hearing board's findings and thus, he was denied due process.

We review the sufficiency of the complaint de novo and will uphold a Fed. R. Civ. P. 12(b)(6) dismissal if it appears that Plaintiff can prove no set of facts that would entitle him to relief. In making this determination, we accept all factual allegations of the complaint as true. Roman v. Cessna Aircraft Co., 55 F 3d 542, 543 (10th Cir. 1995). Applying this standard and construing the pro se complaint liberally, we affirm substantially for the reasons set forth in the district court's order of dismissal.²

AFFIRMED.

Entered for the Court,

Bobby R. Baldock
Circuit Judge

¹ In his complaint, Plaintiff apparently requests both § 1983 and habeas corpus relief. Plaintiff fails to state a claim regardless of how we construe his complaint.

² The district court denied Plaintiff's motion to proceed in forma pauperis on appeal, 28 U.S.C. § 1915, and thus before us as an initial matter is Plaintiff's renewed motion. While we agree with the district court's assessment that the appeal is meritless, that determination necessarily requires us to consider the merits of the complaint. See Dotson v. United States, 287 F.2d 868 (10th Cir. 1961). Accordingly, we grant Plaintiff's motion to proceed in forma pauperis and dispose of the appeal on the merits.