

APR 25 1997

PATRICK FISHER
Clerk

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

SAUL BROWN, JR.,

Plaintiff - Appellant,

v.

STATE OF UTAH,

Defendant - Appellee.

No. 96-4207
(D.C. No. 96-CV-374-G)
(DISTRICT OF UTAH)

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 case is therefore ordered submitted without oral argument.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

Saul Brown appeals the dismissal of his action filed against the State of Utah under 42 U.S.C. § 1983. The district court held because the Eleventh Amendment of the Constitution prohibits a citizen from suing a state without its permission, Mr. Brown's action was frivolous and dismissable under 28 U.S.C. § 1915 inasmuch as Utah had not given its consent to this filing. That judgment was correct.

AFFIRMED.

ENTERED FOR THE COURT

John C. Porfilio
Circuit Judge