

MAR 25 1997

PATRICK FISHER
Clerk

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

PAUL FAZZINI,

Petitioner-Appellant,

v.

RON THOMPSON; JANET RENO;
UNITED STATES OF AMERICA;
LARRY BARNES; CHARLES
MILNER; THOMAS JAMES;
WILLIAM JETER; BILLY
MCCORMACK; PHIL MAUNE;
DIANE MOORE; CARBONE; JOHN
DOE; FEDERAL BUREAU OF
PRISONS; FEDERAL BUREAU OF
INVESTIGATION,

Respondents-Appellees.

No. 96-6174
(D.C. No. CIV-95-1982)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before PORFILIO, ANDERSON, and BRISCOE, Circuit Judges.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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 is therefore ordered submitted without oral argument.

Petitioner Paul Fazzini, proceeding pro se, appeals the district court's order adopting the magistrate judge's recommendation to dismiss his complaint without prejudice. He also appeals the district court's denial of his motion for a temporary restraining order and his request for appointment of counsel. The district court dismissed the complaint for failure to set out a short, plain statement of his claims as required by Fed. R. Civ. P. 8(a)(2), and for failure to submit the claims on the forms designated pursuant to the local rules of court.

Petitioner's complaint contained claims that various constitutional, statutory and common law rights were violated by prison conditions, disciplinary proceedings, confiscation of legal materials, and other actions of prison officials and those who supervise and train them.¹ We have reviewed the district court record and we have considered petitioner's arguments in light of the record and the applicable law. We affirm the district court's order dismissing the complaint

¹ The habeas claims were brought under 28 U.S.C. § 2241. Therefore, no certificate of appealability is required. See Bradshaw v. Story, 86 F.3d 164, 166 (10th Cir. 1996).

without prejudice for substantially the same reasons stated in the magistrate judge's April 3, 1996 report and recommendation.

Petitioner's appeal from the order denying his motion for a temporary restraining order is moot because the detention order he sought to enjoin has been executed. See Thournir v. Buchanan, 710 F.2d 1461, 1463 (10th Cir. 1983) (issue of injunction is moot where event sought to be enjoined has occurred). Petitioner asserts on appeal that he has suffered adverse consequences of the detention order. Those claims were not before the district court; therefore, we do not address them. See Walker v. Mathers (In re Walker), 959 F.2d 894, 896 (10th Cir. 1992). Finally, we affirm the district court's order denying appointment of counsel, finding no abuse of discretion. See Shabazz v. Askins, 14 F.3d 533, 535 (10th Cir. 1994).

Petitioner's motion for appointment of counsel on appeal is denied. The judgment of the United States District Court for the Western District of Oklahoma is AFFIRMED. The mandate shall issue forthwith.

Entered for the Court

John C. Porfilio
Circuit Judge