

UNITED STATES COURT OF APPEALS

NOV 25 1997

TENTH CIRCUIT

PATRICK FISHER
Clerk

USMAN SHEHU SULE,
Plaintiff-Appellant,
v.
UNITED STATES OF AMERICA,
Defendant-Appellee.

No. 97-1209
(D.C. No. 95-S-2042)
(D. Colo.)

ORDER AND JUDGMENT*

Before BALDOCK, McKAY, and LUCERO, 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); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

Plaintiff, an inmate incarcerated at the United States Penitentiary-Administrative Maximum (ADX) in Florence, Colorado, filed a complaint pursuant to the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b) and 2671-2680, for the negligence of the

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

United States in maintaining an overcrowded prison at the Federal Correctional Institution in Sheridan, Oregon.

We affirm the determination of the magistrate judge as accepted by the district court in its Order of Dismissal filed May 20, 1997, that the claim here is properly barred by res judicata. Because the district court correctly determined that Plaintiff's claim is barred by res judicata, we need not address the discretionary function issue.

AFFIRMED.

Entered for the Court

Monroe G. McKay
Circuit Judge