

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

JAN 13 1998

PATRICK FISHER
Clerk

BERNARD HORNE,

Plaintiff - Appellant,

v.

ROY ROMER, Governor of the State of
Colorado,

Defendant - Appellee.

No. 97-1234
(D.C. No. 92-K-1470)
(District of Colorado)

ORDER AND JUDGMENT*

Before **PORFILIO, KELLY**, and **HENRY**, 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 is an appeal from the dismissal of the remaining claim in a pro se civil rights complaint. Although Mr. Horne raises issues on matters other than the order of dismissal

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

dated May 20, 1997, our appellate jurisdiction is circumscribed to the contents of the notice of appeal. Fed. R. App. P. 3(c) (the notice of appeal must designate the order appealed from). Inasmuch as the notice filed by Mr. Horne designates the order of May 20 as the order appealed from, we have no jurisdiction over matters beyond that order.

The district court's order is predicated upon a finding that the only issue remaining in Mr. Horne's complaint after previous rulings of the court was a request for injunctive relief from conditions in an institution to which Mr. Horne was no longer confined. The court properly reasoned that request was moot. *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975). The dismissal was not erroneous because no justiciable controversy remained to be litigated.

AFFIRMED.

ENTERED FOR THE COURT

John C. Porfilio
Circuit Judge