

JUL 18 1997

PATRICK FISHER
Clerk

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

STEVE DUNCAN,

Plaintiff-Appellant,

v.

KARL SANNICKS, Secretary of
Corrections; JOHN SHANKS, Warden,
Penitentiary of New Mexico; DONALD
HOOVER, Classification Bureau
Chief/Interstate Compact; MANUEL
ROMERO, Director of Adult Prisons;
GARY MEIR, Warden, South Unit;
GILBERT GARCIA, Program Director, in
their individual and official capacities,

Defendants-Appellees.

No. 97-2092
(D.C. No. CIV-96-1182)
(District of New Mexico)

ORDER AND JUDGMENT*

Before **SEYMOUR**, Chief Judge, **PORFILIO**, Circuit Judge, and **MURPHY**, Circuit
Judge.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

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.

Steve Duncan appeals the order of the district court dismissing his civil rights complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim and under 28 U.S.C. § 1915(e)(2) on the ground of frivolousness. We agree the complaint fails to state a claim for substantially the same reasons given by the district court. Although Mr. Duncan believes the district court erred because it referred to him as a “New Mexico inmate” when in fact he is a transferee inmate from South Dakota, he merely indulges in semantics. There is no doubt he is presently incarcerated in a penal facility of the State of New Mexico and is an inmate of that institution by definition. Thus the district court’s analysis is not erroneous.

AFFIRMED.

ENTERED FOR THE COURT

John C. Porfilio
Circuit Judge