

UNITED STATES COURT OF APPEALS

OCT 15 1998

TENTH CIRCUIT

PATRICK FISHER
Clerk

JOE JOHNSON, JR,

Plaintiff - Appellant,

v.

JAMES L. SAFFLE; STEVE
HARGETT; and DELORES RAMSEY,

Defendants - Appellees.

No. 98-6225

(D.C. No. 98-CV-379)

(W.D. Okla.)

ORDER AND JUDGMENT*

Before **ANDERSON, McKAY, and LUCERO**, Circuit Judges.

After examining Plaintiff-Appellant's brief 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, a *pro se* state prisoner, appeals the district court's dismissal of his 42 U.S.C. § 1983 action. Plaintiff filed a section 1983 action claiming that Defendants violated his constitutional rights by prohibiting smoking except in

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

certain designated areas in the prison facility in which he is confined. Specifically, he contends that the “no smoking” policy amounts to cruel and unusual punishment under the Eighth Amendment, deprives him of due process and equal protection under the First, Fifth, and Fourteenth Amendments, and violates an Oklahoma statute. In his Report and Recommendation filed April 16, 1998, the magistrate judge recommended that Plaintiff’s complaint be dismissed as frivolous and for failure to state a claim under 28 U.S.C. § 1915A. After considering Plaintiff’s objections, the district court adopted the magistrate judge’s recommendation and dismissed Plaintiff’s action.

After reviewing the record and Plaintiff’s arguments on appeal, we affirm the district court’s dismissal of Plaintiff’s section 1983 action for substantially the same reasons set forth by the magistrate judge and adopted by the district court in its Order filed May 12, 1998.

AFFIRMED and DISMISSED.

Entered for the Court

Monroe G. McKay
Circuit Judge