

UNITED STATES COURT OF APPEALS

JUL 29 1999

TENTH CIRCUIT

PATRICK FISHER
Clerk

ROBERT DALE STRALEY,

Plaintiff-Appellant,

v.

HANK GALETKA; COLLEEN
GABBITIES; TIM PARKER; JANENE
HUANG; H.L. PETE HAUN; JACK
FORD; JIM LABOUNTY; SCOTT
CARVER; NOLA PHILLIPS; RON
SANCHEZ; DALE WRIGHT;
SPENCER ROBINSON; CRAIG
BALLS; BILLIE CASPER; ANTHONY
JOHNSON; WES CHURCH; DAN
TINGEY, Individually and in their
official capacities,

Defendants-Appellees.

No. 99-4084

(D.C. No. 98-CV-552-G)
(D. Utah)

ORDER AND JUDGMENT *

Before **SEYMOUR** , Chief Judge, **BALDOCK** and **HENRY** , 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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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 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 the appellate record, this panel has determined unanimously to honor the parties request for a decision on the briefs without oral argument. See Fed. R. App. P. 34(f). The case is therefore ordered submitted without oral argument.

Plaintiff Robert Dale Straley filed this 42 U.S.C. § 1983 claim alleging twenty-one instances where prison officials violated his constitutional rights. The district court referred the case to a magistrate judge. The magistrate judge prepared a report and recommendation recommending that the cause be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B) because: (1) Plaintiff's request for a temporary injunction lacked merit; (2) Plaintiff failed to exhaust his administrative remedies as to some claims; (3) Plaintiff voluntarily dismissed several additional claims; and (4) Plaintiff's remaining claims failed to state a claim upon which relief may be granted. The district court disagreed that Plaintiff failed to exhaust his administrative remedies. However, the district court denied those claims on other grounds. As to the rest of the claims, the district court agreed with the magistrate judge and adopted the report and recommendation. Accordingly, the district court dismissed Plaintiff's lawsuit. On appeal, Plaintiff contends that all twenty-one issues raised in the district court amount to constitutional violations. As relief, Plaintiff asks us to reverse the district court's judgment and remand for a trial on the merits.

We have carefully reviewed Plaintiff's brief, Plaintiff's supplemental briefs and attachments ¹, the district court's order, the magistrate judge's report and

¹ On July 26, 1999, Plaintiff filed two documents styled "Supplement to Appellant's Brief" and "Additional and Final Supplement to Appellant's Brief." Plaintiff filed no motion for additional briefing. We liberally construe Plaintiff's additional submission's as motions for additional briefing and grant those

recommendation and the entire record before us. We affirm substantially for the reasons contained in the district court's order and the magistrate's report and recommendation. Plaintiff's motion to proceed in forma pauperis is granted. This decision shall count as a prior occasion under 28 U.S.C. § 1915(g). Plaintiff is reminded that he now has two "prior occasions" under § 1915(g). Should he file another lawsuit which is dismissed pursuant to § 1915 as malicious, frivolous, or for failing to state a claim upon which relief may be granted, § 1915's filing restrictions will prevent him from filing further lawsuits unless he is in imminent danger of serious physical injury.

AFFIRMED.

Entered for the Court

Bobby R. Baldock
United States Circuit Judge

¹(...continued)
motions.