

July 1, 2008

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

ROBERT GENE ROSS,

Plaintiff-Appellant,

v.

JOE WILLIAMS, Director, N.M.
Correction Department; GEORGE
TAPIA, Warden, Western N.M.
Correctional Facility,

Defendants-Appellees.

No. 07-2283
(D.C. No. 2:06-CV-00867-RB-RLP)
(D.N.M.)

ORDER AND JUDGMENT*

Before **O'BRIEN, McKAY**, and **GORSUCH**, Circuit Judges.

Pro se state prisoner Robert Gene Ross brings this 42 U.S.C. § 1983 appeal alleging civil rights violations against employees of the Western New Mexico Correctional Facility and the New Mexico Correction Department. On appeal, he challenges the district court's dismissal of five constitutional claims against

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

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)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Defendants. Specifically, Plaintiff claims Defendants violated his due process rights by providing inadequate legal materials in the prison library and overcharging him for copies and then denying him access to legal photocopies when his prison account was frozen for nonpayment. Plaintiff claims Defendants violated his right to be free from cruel and unusual punishment by crushing his medication as required by prison policy before allowing him to swallow it, thereby allegedly producing regular, harmful physical effects on him, denying him access to toilets and water, and using harsh disciplinary procedures on inmates.

Plaintiff's § 1983 complaint alleged fifteen different claims, most of which the district court dismissed sua sponte for various reasons. The district court then ordered Defendants to file a *Martinez* report to address Plaintiff's remaining claims. *See Martinez v. Aaron*, 570 F.2d 317 (10th Cir. 1978) (per curiam). A magistrate judge reviewed Defendants' *Martinez* report and Plaintiff's response to it before recommending Plaintiff's complaint be dismissed. The district court adopted the magistrate judge's report and dismissed the case with prejudice. Plaintiff appealed.

On appeal, Plaintiff introduces new evidence in support of his claim of inadequate legal resources. Plaintiff alleges the inadequate prison library precludes him from legally preparing for a civil action in which he is involved in a state district court. We decline to consider this evidence, offered for the first

time on appeal. *See Boone v. Carlsbad Bancorporation, Inc.*, 972 F.2d 1545, 1549 n.1 (10th Cir. 1992).

After carefully reviewing the briefs and the record on appeal, we see no error in the dismissal of Defendant's claims. Thus, having conducted a de novo review, we **DENY** Plaintiff's Motion and Request for Hearing and **DISMISS** this appeal for substantially the reasons stated by the magistrate judge and the district court. We **GRANT** Plaintiff's motion to proceed in forma pauperis and remind him of his continuing obligation to make partial payments until his filing fee has been paid in full. Any other pending motions are **DENIED**.

Entered for the Court

Monroe G. McKay
Circuit Judge