

November 23, 2011

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT
Elisabeth A. Shumaker
Clerk of Court

TONY E. KANNO,
Plaintiff–Appellant,

v.

THREE UNKNOWN AGENTS OF THE
FEDERAL MARSHALS OF
OKLAHOMA CITY OFFICE,
Defendant–Appellee.

No. 11-6187
(D.C. No. 5:11-CV-00032-D)
(W.D. Oklahoma)

ORDER AND JUDGMENT*

Before **O’BRIEN, McKAY, and TYMKOVICH**, Circuit Judges.

After examining Plaintiff’s brief and the appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). This case is therefore ordered submitted without oral argument.

Plaintiff, appearing pro se,¹ appeals the dismissal of his civil rights action pursuant to 28 U.S.C. § 1915A(b)(1) for failure to state a claim and frivolousness. After a

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

¹ We liberally construe Plaintiff’s pro se filings. *See Ledbetter v. City of Topeka, Kan.*, 318 F.3d 1183, 1187 (10th Cir. 2003).

thorough review of the record, we affirm the district court's order.

Plaintiff, a citizen of Nigeria, was incarcerated in the David C. Moss Criminal Justice Center in Tulsa, Oklahoma, at the time he filed his complaint. He has since been released. Plaintiff contends that he has been under investigation in "secret court" and has been "given an unconstitutional death penalty by the Department of Homeland Security." (Appellant's Br. at 5, 7.) Plaintiff claims he is being slowly burned to death by drones that use a microwave to boil and cook parts of his body, and that he is only alive because he understood the weapons and kept himself wet.

The district court dismissed Plaintiff's complaint as frivolous under 28 U.S.C. § 1915A(b)(1). A claim may be dismissed as frivolous "if the facts alleged are clearly baseless, a category encompassing allegations that are fanciful, fantastic, and delusional." *Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992) (internal quotation marks and citations omitted). We review the district court's determination of factual frivolousness under an abuse-of-discretion standard, *see id.*, and we are not persuaded that the district court abused its discretion in this case by finding the allegations to be clearly baseless.

For substantially the same reasons given by the magistrate judge and the district court, we **AFFIRM** the dismissal of Plaintiff's action. Plaintiff's motion to proceed *in forma pauperis* on appeal is **DENIED**.

ENTERED FOR THE COURT

Monroe G. McKay
Circuit Judge