

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

October 23, 2012

DEMETRIUS TOMAZ ROGERS,

Plaintiff–Appellant,

v.

RAYMOND E. DENECKE,

Defendant–Appellee.

Elisabeth A. Shumaker
Clerk of Court

No. 12-6198
(D.C. No. 5:12-CV-00373-R)
(W.D. Oklahoma)

ORDER AND JUDGMENT*

Before **BRISCOE**, Chief Judge, **McKAY** and **HOLMES**, Circuit Judges.

After examining the briefs 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 Demetrius Rogers, a pro se Oklahoma state prisoner, challenges the dismissal of his 42 U.S.C. § 1983 prisoner complaint. In his complaint, Plaintiff alleged that Defendant, the assistant public defender who represented him in his state criminal

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

case, deprived him of his right to due process by advising him to accept a plea agreement rather than proceed to trial because of his race. Plaintiff's complaint also included a state malpractice claim.

The magistrate judge recommended that the district court dismiss Plaintiff's § 1983 claim because, as set forth in *Polk County. v. Dodson*, 454 U.S. 312, 325 (1981), Defendant, as a public defender, was not acting under color of state law when he represented Plaintiff in the criminal proceeding. The magistrate judge further recommended that the district court decline to exercise supplemental jurisdiction over the state law malpractice claim. After reviewing Plaintiff's objections, the district court agreed. It adopted the magistrate judge's report and recommendation and dismissed Plaintiff's complaint.

Nothing in Plaintiff's brief or the appellate record persuades us there was any error in the magistrate judge's analysis or the district court's order. Therefore, for substantially the same reasons given by the magistrate judge and the district court, we **AFFIRM** the dismissal of Plaintiff's complaint. Plaintiff's motion to proceed *in forma pauperis* on appeal is **GRANTED**. Plaintiff is reminded of his obligation to continue making partial payments until his entire filing fee has been paid in full.

Entered for the Court

Monroe G. McKay
Circuit Judge