

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

December 10, 2013

Elisabeth A. Shumaker
Clerk of Court

JEREMY PINSON,
Petitioner - Appellant,

v.

DAVID BERKEBILE,
Respondent - Appellee.

No. 13-1399
(D.C. No. 1:13-CV-01953-LTB)
(D. Colorado)

ORDER AND JUDGMENT*

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

Jeremy Pinson, appearing pro se, appeals the district court's order dismissing his application for a writ of habeas corpus under 28 U.S.C. § 2241. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm because Mr. Pinson does not challenge the district court's ground for dismissal.

* After examining 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)(2) and 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

Mr. Pinson is a prisoner in the custody of the United States Bureau of Prisons in Florence, Colorado. His § 2241 application alleged that prison officials violated his Fifth Amendment right to due process when they disciplined him without a hearing, a mental examination, or an opportunity to call witnesses and present documentary evidence. It also alleged that his mental condition prevented him from being responsible for the conduct resulting in discipline.

The United States District Court for the District of Colorado found Mr. Pinson's application devoid of factual support and ordered him to amend it. He failed to amend the application within 30 days and did not communicate with the court. As a result, the court dismissed the action without prejudice under Fed. R. Civ. P. 41(b).

On appeal Mr. Pinson raises two challenges that were not raised in district court: (1) that the district court should have appointed counsel sua sponte to assist him with his application and (2) that he was denied his First Amendment rights by restrictions placed on his access to writing materials while on suicide watch. We do not address these challenges. *See United States v. Gould*, 672 F.3d 930, 938 (10th Cir. 2012) (“Failure to raise an argument before the district court generally results in forfeiture on appeal.” (brackets and internal quotation marks omitted)).

Mr. Pinson does not, however, challenge the district court's finding that his § 2241 application was deficient. Therefore we affirm the judgment below. *See Morris v. Noe*, 672 F.3d 1185, 1193 (10th Cir.2012) (An “argument insufficiently raised in the opening brief is deemed waived.” (internal quotation marks omitted)).

We AFFIRM the district court's dismissal and DENY Mr. Pinson's motion to proceed *in forma pauperis*.

ENTERED FOR THE COURT

Harris L Hartz
Circuit Judge