

May 23, 2014

UNITED STATES COURT OF APPEALS

Elisabeth A. Shumaker
Clerk of Court

TENTH CIRCUIT

MUSTAPHA D.R. TORAIN, #464762,

Plaintiff - Appellant,

v.

MITCHELL R. MORRISSEY, Reg. No.
13784; TIM GOSS, #05118; SASSETTI,

Defendants - Appellees.

No. 13-1502
(D.C. No. 1:13-CV-02420-LTB)
(D. Colo.)

ORDER AND JUDGMENT*

Before **LUCERO, McKAY**, and **MURPHY**, 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 Mustapha Torain filed this complaint under 42 U.S.C. § 1983 while in jail awaiting trial on state drug charges. Although his complaint was unclear, he appeared to mainly challenge the validity of his arrest and of the criminal charges pending 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* This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel.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.

him. The magistrate judge concluded the complaint was deficient under Rule 8 of the Federal Rules of Civil Procedure because the specific claims he asserted were confusing and difficult to understand. The magistrate judge accordingly instructed Plaintiff to file an amended complaint clearly identifying the specific claims he was asserting, the specific facts that supported each asserted claim, the Defendants against whom he was asserting each claim, and what each Defendant did to allegedly violate his rights. *See Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1163 (10th Cir. 2007). The magistrate judge also noted that federal courts may not intervene in ongoing state court proceedings absent extraordinary circumstances. *See Phelps v. Hamilton*, 122 F.3d 885, 889 (10th Cir. 1997).

Plaintiff responded to the magistrate judge's order by filing two new pleadings and two other documents that contained varying, and still unclear, iterations of his claims. The district court reviewed all of the submitted pleadings and other documents and concluded that Plaintiff had still failed to provide a short and plain statement of the claims he was asserting. The district court accordingly dismissed the action without prejudice for failure to file an amended pleading that complied with Rule 8.

After thoroughly reviewing Plaintiff's brief and the record on appeal, we see no error in the district court's dismissal of the action for failure to comply with Rule 8. We also note that, to the extent Plaintiff's complaint sought to raise a claim of malicious prosecution or other claim challenging the validity of the pending state court charges against him, such claims would be premature under the rule of *Heck v. Humphrey*, 512

U.S. 477 (1994). *See Beck v. City of Muskogee Police Dep't*, 195 F.3d 553, 557 (10th Cir. 1999).

For substantially the same reasons given by the magistrate judge and district court, we **AFFIRM** the district court's order dismissing this action without prejudice. We **GRANT** Plaintiff's motion to proceed in forma pauperis on appeal and remind him of his obligation to continue making partial payments until the entire filing fee has been paid in full.

Entered for the Court

Monroe G. McKay
Circuit Judge