

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

May 23, 2023

Christopher M. Wolpert
Clerk of Court

DENARD DARNELL NEAL,

Plaintiff - Appellant,

v.

LOVETT, Warden; M. STARR, Warden;
DEANTON, Associate Warden;
BOULWARE, Associate Warden;
ALTIZER, Associate Warden; LEWIS,
Captain; BOYER, Facility Supervisor;
PINO, Mailroom Supervisor; MICHAEL
HAGANS, Mailroom Staff; DUBOSE,
Unit Manager; TAYLOR, Unit Manager;
BACA, Case Manager; MARQUES, Case
Manager; CLEMENTI, Counselor;
MANN, Counselor; LINDGREN, Health
Services Administrator; KETTLES,
Chaplain; BISHOP, Chaplain; POTTER,
Custody Staff; MCMICHAELS, Custody
Staff; CASTRO, Custody Staff;
HERNANDEZ, Custody Staff; HILT,
Custody Staff; VEGA, Custody Staff;
SOLIS, Unit Secretary; LUJUAN, Trust
Fund Supervisor,

Defendants - Appellees.

No. 23-1033
(D.C. No. 1:22-CV-01210-LTB-GPG)
(D. Colo.)

ORDER AND JUDGMENT*

Before **PHILLIPS, BALDOCK, and ROSSMAN**, Circuit Judges.**

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

Plaintiff Denard Darnell Neal, an inmate at the United States Penitentiary in Florence, Colorado, appearing pro se, appeals the district court’s dismissal of his Second Amended Complaint (SAC) *without* prejudice for failure to comply with Federal Rule of Civil Procedure 8(a)(2) (requiring “a short and plain statement of the claim showing that the pleader is entitled to relief”). Plaintiff brought his SAC pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), against 26 named Defendants. Defendant’s SAC purports to allege claims under the First, Fourth, Fifth, Sixth, and Eighth Amendments to the United States Constitution for (1) “abuse of authority / creation of illegal control unit,” (2) “theft of personal property to obstruct justice,” (3) “intentional mail theft from authorized mail depository,” (4) “denial of medical treatment,” (5) “denial of religious beliefs,” (6) “falsification of custody classification forms to deny Plaintiff a lower custody placement,” (7) “inadequate living quarters,” (8) “illegal phone sanction by custody staff,” (9) “intentional breach of trust concerning the inmate trust fund to prevent court litigation,” (10) “intentional denial of access to the law library,” (11) “barbaric inhumane dangerous living conditions,” (12) “theft of legal documents,” (13) “refusal to provide administrative remedies,” and (14) “acts of retaliation.” Upon referral, a United States Magistrate

** After examining the briefs and 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). The case is therefore ordered submitted without oral argument.

Judge (MJ) reviewed the complaint pursuant to D.C. Colo. L. Civ. R. 8.1(b) and 28 U.S.C. § 1915A. After review, the MJ entered an 18-page “Recommendation” to the United States District Judge (DJ) recommending that the SAC be dismissed *without* prejudice for failure to comply with federal pleading standards. The DJ, over Plaintiff’s objection, adopted the recommendation in its entirety and dismissed the SAC *without* prejudice. The DJ concluded by denying Plaintiff leave to proceed *in forma pauperis* on appeal and certifying pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from the dismissal of the SAC would not be taken in good faith.

Our jurisdiction to review this matter arises under 28 U.S.C. § 1291. We have thoroughly reviewed the record on appeal, including Plaintiff’s SAC, the MJ’s recommendation, Plaintiff’s objections thereto, and the DJ’s final order. We have also thoroughly reviewed Plaintiff’s appellate brief and motion to proceed *in forma pauperis*. Where a district court has taken the proper measure of a case and articulates a cogent rationale for its decision, it serves no useful purpose for us to write at length. Thus, we AFFIRM the district court’s judgment for substantially the reasons set forth in the MJ’s recommendation. We GRANT Plaintiff’s motion to proceed *in forma pauperis*. Plaintiff remains responsible for paying the entirety of the appellate filing fee consistent with 28 U.S.C. § 1915(b)(1).

Entered for the Court

Bobby R. Baldock
Circuit Judge