

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Smith v. Barker

No. No. 19-1469, United States Court of Appeals for the Tenth Circuit (March 16, 2020)

SUMMARY

In this unpublished Tenth Circuit decision, the court affirmed the dismissal of a pro se prisoner's civil rights complaint under 42 U.S.C. §§ 1981 and 1983 as legally frivolous pursuant to 28 U.S.C. § 1915(e). The plaintiff's access-to-courts claim failed because he did not allege an actual injury—i.e., specific facts showing a nonfrivolous underlying legal claim was lost or hindered—as required by **Lewis v. Casey**, 518 U.S. 343 (1996). His § 1981 claim was also properly dismissed for lack of any factual support for an alleged contractual right to obtain copies of state statutes. The court further denied the plaintiff's request to proceed in forma pauperis on appeal for failing to present a reasoned, nonfrivolous argument.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	Michael R. Murphy; Phillips; Murphy; McHugh
JURISDICTION	Federal
DECIDED	March 16, 2020
DOCKET	No. 19-1469
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from dismissal of civil rights complaint as legally frivolous under 28 U.S.C. § 1915(e).
STANDARD OF REVIEW	De novo review of dismissal as legally frivolous. <i>Fogle v. Pierson</i> , 435 F.3d 1252, 1259 (10th Cir. 2006).
PRECEDENTIAL VALUE	Unpublished
PARTIES	Rodney A. Smith v. Susan Barker; Jerry Roark; Nanette Thomas; Shawna Gonzales; Dianna Milenski; Steven Salazar; Marshall Griffith; PPMU Mr. Cook; Sandra Brown; Anthony A. Decesaro

TOPICS

- civil rights
- section 1983
- prisoners rights
- standard of review
- appellate procedure

PRACTICE AREAS

Civil Rights

QUESTIONS PRESENTED

1. Whether the district court erred in dismissing Smith's access-to-courts claim as legally frivolous.
2. Whether the district court erred in dismissing Smith's § 1981 claim as legally frivolous.

HOLDINGS

1. Smith's complaint was legally frivolous because it failed to allege facts demonstrating actual injury to his access to the courts as required by *Lewis v. Casey*, and his § 1981 claim was conclusory.

KEY QUOTATIONS

“Despite the specific instructions provided to Mr. Smith, he fails to allege facts that demonstrate he suffered any actual injury as a result of being denied copies of the Louisiana statutes he sought to include as exhibits with his opening brief. More specifically, Mr. Smith fails to describe the underlying cause of action that allegedly was lost in order to demonstrate the claim is not frivolous. His vague and conclusory assertions that his current Colorado sentence was enhanced by prior State of Louisiana convictions and that he wanted to submit copies of the Louisiana statutes with his opening brief are not sufficient to demonstrate actual injury.” (at 3 (quoting magistrate judge's report))

*“There is nothing in *Petrick* indicating that the mere assertion a prisoner wants to collaterally attack an out-of-state sentence used to enhance a current sentence is sufficient, standing alone, to satisfy the requirements of *Lewis*.”* (at 4)

FACTUAL BACKGROUND

Smith, a prisoner in the Colorado Department of Corrections, filed a civil rights complaint under 42 U.S.C. §§ 1981 and 1983 alleging that prison officials denied him copies of Louisiana statutes he wanted to attach to state-court pleadings, thereby violating his right of access to the courts, and interfered with a contractual right to receive copies. The district court dismissed the complaint as legally frivolous under 28 U.S.C. § 1915(e)(2)(B)(i) because Smith failed to allege specific facts demonstrating actual injury or a nonfrivolous underlying claim.

PROCEDURAL HISTORY

Smith filed a civil rights complaint in the District of Colorado. The district court ordered Smith to file an amended complaint, then referred to a magistrate judge who recommended dismissal as frivolous. The district court adopted the recommendation and dismissed with prejudice. Smith appealed.

DISPOSITION

affirmed

CASES CITED

- Lewis v. Casey, 518 U.S. 343 (1996)
- Gee v. Pacheco, 627 F.3d 1178 (10th Cir. 2010)
- Fogle v. Pierson, 435 F.3d 1252 (10th Cir. 2006)
- Petrick v. Maynard, 11 F.3d 991 (10th Cir. 1993)
- Lister v. Dep't of Treasury, 408 F.3d 1309 (10th Cir. 2005)