

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

August 19, 2019

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

DOMINICK JAMES FORD,

Plaintiff - Appellant,

v.

CASEY MCKINNEY; JOHN/JANE DOE
(1), Topeka Police Department, in his or
her individual and official capacity;
JOHN/JANE DOE (2), Shawnee County
Sheriff Department, in his or her individual
and official capacity; JOHN/JANE DOE
(3), Shawnee County Detective Office, in
his or her individual and official capacity;
JOHN/JANE DOE (4), Shawnee County
Prosecutor Office, in his or her individual
and official capacity; JOHN/JANE DOE
(5), Editor, CJ. Online Internet, in his or
her individual and official capacity;
JOHN/JANE DOE (6), Journalist, Capital
City Journal Newspaper, in his or her
individual and official capacity,

Defendants - Appellees.

No. 19-3044
(D.C. No. 5:16-CV-03241-SAC)
(D. Kan.)

ORDER AND JUDGMENT*

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

Dominick Ford appeals the district court's denial of his motion for leave to file an appeal out of time. 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.

Mr. Ford, acting pro se, filed his amended complaint in this case in February 2018. District courts are instructed to review the "complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer" and to dismiss the complaint if it "is frivolous, malicious, or fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915A(a), (b). Pursuant to that duty, the district court here reviewed Mr. Ford's amended complaint and determined that it failed to state a claim upon which relief could be granted. The court issued a written decision dismissing Mr. Ford's case in August 2018.

Because Mr. Ford filed a notice of appeal more than three months later, the Clerk of this court issued an order to show cause as to why his appeal should not be dismissed as untimely filed. *See Ford v. McKinney*, No. 18-3256, order (10th Cir. Dec. 13, 2018). Subsequently, a panel of this court dismissed the appeal. *See Ford v. McKinney*, No. 18-3256, order at 5 (10th Cir. Feb. 6, 2019).¹ Mr. Ford then filed

¹ Mr. Ford suggests that the court improperly dismissed his appeal before the deadline for him to submit a brief explaining why the appeal should not be dismissed as untimely. However, Mr. Ford filed his brief in January 2019, and the court addressed it in the order dismissing the appeal. *See Ford v. McKinney*, No. 18-3256, order at 3 (10th Cir. Feb. 6, 2019). There was no reason for the court to delay its

in the district court a motion to reopen the time to file an appeal. The district court denied that motion, and Mr. Ford appealed.

A “district court may reopen the time to file an appeal” if (A) the movant did not receive notice of the entry of judgment within 21 days of it being entered; (B) the motion to reopen was filed within the earlier of 180 days after the entry of judgment or 14 days after the movant received notice of the judgment; and (C) no party would be prejudiced. Fed. R. App. P. 4(a)(6). At the absolute latest, Mr. Ford had received notice of the district court’s dismissal of his case by December 2018, when he filed his first notice of appeal (without a motion to reopen the time to appeal). He did not file his motion to reopen the time to appeal, however, until February 2019. This motion was outside the 14-day window provided in Fed. R. Civ. P. 4(a)(6)(B), and therefore the district court properly denied Mr. Ford’s request.

For the foregoing reasons, and substantially the same reasons as those given by the district court, the district court’s order denying Mr. Ford’s motion to reopen the time to appeal is **AFFIRMED**. Mr. Ford’s motions for an evidentiary hearing on the merits and to proceed *in forma pauperis* are **DENIED**.

Entered for the Court

Monroe G. McKay
Circuit Judge

ruling until after the filing deadline when Mr. Ford had already filed his brief and the court considered it in making its ruling.