

June 26, 2009

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

JAMES K. CONKLETON,

Plaintiff - Appellant,

v.

ARISTEDES ZAVARAS, Executive Director of the Colorado Department of Corrections (“CDOC”) in his official capacity; JOE STOMMEL, in his official capacity as the Program Administrator of the Sex Offender Treatment and Monitoring Program (“SOTMP”) for the CDOC; JOHN P. MCGILL, in his individual and official capacity as a Treatment Provider for the CDOC’s SOTMP; BONNIE CANTU, in her individual and official capacity as a Treatment Provider for the CDOC’s SOTMP; JAMES LANDER, in his individual and official capacity as a Treatment Provider for the CDOC’s SOTMP; BURL McCULLAR, in his official capacity as a Treatment Provider for the CDOC’s SOTMP; ANTHONY DeCESARO, in his official capacity as the Step III Grievance Officer for the CDOC’s SOTMP; AL ESTEP, in his official capacity as the Warden of the CDOC’s Fremont Corr. Facility; JOHN HYATT, in his official capacity as a Correctional Officer IV for the CDOC; ED MURO, in his individual and official capacity as a Correctional Officer I for the CDOC; RICHARD DeGROOT, in his

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(D.C. No. 08-CV-02612-ZLW)

individual and official capacity as Case Manager for the CDOC; THOMAS MISEL, in his official capacity as Case Manager Supervisor for the CDOC, also sued in his individual capacity; ANTHONY PIPER, in his official capacity as a Correctional Officer III for the CDOC; RICHARD LIND, in his official capacity as a Correctional Officer V for the CDOC; CATHIE HOLST, in her official capacity as Manager for the Office of Corr. Legal Services for the CDOC,

Defendants - Appellees.

ORDER AND JUDGMENT*

Before **LUCERO, MURPHY, and McCONNELL**, Circuit Judges.

After examining Appellant's brief and the appellate record, this court has determined unanimously that oral argument would not materially assist 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.

In 2008, appellant James K. Conkleton, a Colorado state prisoner, filed a complaint pursuant to 42 U.S.C. § 1983. The first claim for relief centered around

*This order and judgment is not binding precedent except under the doctrines of law of the case, *res judicata*, and collateral estoppel.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

Conkleton's participation in a sex offender treatment program. According to Conkleton, his due process rights were violated when he was terminated from the program in 2003 and denied reentry in 2006. In connection with this claim, Conkleton sought a preliminary injunction requiring Defendants to place him in a sex offender treatment program. The district court denied Conkleton's motion, concluding he failed "to allege facts that demonstrate he is facing immediate and irreparable injury."

This court reviews the denial of a preliminary injunction under an abuse of discretion standard. *Gen. Motors Corp. v. Urban Gorilla, LLC*, 500 F.3d 1222, 1226 (10th Cir. 2007). Having reviewed the record, Conkleton's appellate brief, and the applicable law, we can discern no reversible error by the district court. Exercising jurisdiction pursuant to 28 U.S.C. § 1292(a)(1), we **affirm** the district court's order of January 21, 2009, for substantially the reasons stated therein. Conkleton's motion to proceed *in forma pauperis* on appeal is **granted**. Conkleton is reminded that he remains obligated to continue making partial payments until his appellate filing fee is paid in full. *See* 28 U.S.C. § 1915(b).

ENTERED FOR THE COURT

Michael R. Murphy
Circuit Judge