

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

December 23, 2009

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

SEDRICK LATROY MCKINNEY,

Plaintiff-Appellant,

v.

PAUL LAIRD, Associate Warden;
LEON EGGLESTON, Lieutenant;
STEVEN HANSEN, Officer,

Defendants-Appellees.

No. 09-1189
(D.C. No. 1:02-CV-00490-RPM-CBS)
(D. Colo.)

ORDER AND JUDGMENT*

Before **KELLY, PORFILIO, and O'BRIEN**, Circuit Judges.

Sedrick Latroy McKinney, a federal prisoner proceeding pro se, appeals the dismissal of his civil rights lawsuit for failure to prosecute and the denial of his motion for reconsideration. The dismissal came seven years into the action, after the second time that Mr. McKinney caused his court-appointed attorneys to

* After examining the briefs and appellate record, this panel 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. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

withdraw just before trial.¹ On appeal, Mr. McKinney argues that he was prepared to proceed to trial pro se and that he so informed the district court. Our review of the record, however, indicates that he also informed the district court that he would “not be able to prosecute his case with assurance and effectively,” without calling two expert witnesses who had not previously participated in the case. R., Vol. 2 at 529-30; *see also* Aplt. Br. at 17-20 (repeating need for witnesses). Thus, the district court did not err in concluding that Mr. McKinney was *not* prepared to proceed to trial and that he had failed to prosecute his action. It follows that it was not an abuse of discretion for the court to deny the motion for reconsideration under Fed. R. Civ. P. 59(e) and 60(b).

The appellees’ motion to dismiss for lack of jurisdiction is DENIED. Mr. McKinney’s motion to proceed without prepayment of fees is DENIED, and the judgment of the district court is AFFIRMED for substantially the reasons stated in the district court’s Order for Dismissal dated March 23, 2009.

Entered for the Court

John C. Porfilio
Circuit Judge

¹ The first attorney withdrew at Mr. McKinney’s request two weeks before the trial set for April 3, 2007. The attorneys who were later appointed withdrew one month before the trial set for January 12, 2009, on the ground that Mr. McKinney made the representation unreasonably difficult.