

January 8, 2013

UNITED STATES COURT OF APPEALS

Elisabeth A. Shumaker
Clerk of Court

TENTH CIRCUIT

MIKEAL GLENN STINE,

Plaintiff–Appellant,

v.

UNITED STATES FEDERAL BUREAU OF PRISONS; DR. CHRISTOPHER WILSON, ADX; MR. MUNSON, Associate Warden, ADX; DAVID ALLRED, Clinical Director, ADX; MR. ROGERS, EMT, ADX; BLAKE DAVIS, Warden, ADX; LEWIS T. BABCOCK, Judge; WILEY Y. DANIEL, Judge; KRISTEN L. MIX, Magistrate Judge; CRAIG B. SHAFFER, Magistrate Judge; BOYD N. BOLAND, Magistrate Judge; ZITA L. WEINSHIENK, Judge; PHILLIP A. BRIMMER, Judge; MS. AMY L. PADDEN, Attorney, AUSA; MR. J. BENEDICT GARCIA, Attorney, AUSA; JOHN DOES; MARCIA S. KRIEGER, Judge; RICHARD P. MATSCH, Judge; JOHN L. KANE, Judge; WALKER D. MILLER, Judge; CHRISTINE M. ARGUELLO, Judge; MICHAEL J. WATANABE, Magistrate Judge; MICHAEL J. HEGARTY, Magistrate Judge; KATHLEEN M. TAFOYA, Magistrate Judge; DAVID L. WEST, Magistrate Judge; GUDRUN J. RICE, Magistrate Judge; A. OSAGIE, Physician Asst., ADX; MR. SHOCKY, Correctional Officer, ADX,

Defendants–Appellees.

No. 12-1319

(D.C. No. 1:12-CV-01504-WJM)

(D. Colorado)

ORDER AND JUDGMENT*

Before **BRISCOE**, Chief Judge, **McKAY** and **HOLMES**, Circuit Judges.

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

Plaintiff Mikeal Stine, a federal prisoner proceeding pro se, appeals the district court's denial of his petition for leave to file a pro se complaint. In his proposed complaint, Plaintiff alleged, among other things, that he has been denied medical treatment for an eye disease and for a skin infection, and that he has not received surgery or the proper medication for a life-threatening acid reflux condition. Plaintiff has an extensive history of filing frivolous and malicious actions in federal courts. For this reason, the district court in a previous case imposed prospective filing restrictions on any of his future pro se complaints. *Stine v. Lappin*, No. 07-CV-01839, 2009 WL 2848849, at *5, 20-22 (D. Colo. Sept. 1, 2009). In the present case, the district court denied Plaintiff leave to file his proposed complaint, concluding that Plaintiff had failed to comply with

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

the strict filing restrictions imposed by the court and that at least two of his claims were either frivolous or malicious or both. Plaintiff appeals this decision raising three arguments: First, Plaintiff concludes, without further discussion, that he has met the filing restrictions that have been imposed upon him. Second, Plaintiff appears to challenge the validity of the filing restrictions, arguing they must contain an emergency exception for claims such as the ones raised in his proposed complaint. Finally, Plaintiff argues the District of Colorado district court and magistrate judges are biased and prejudiced against him and are deliberately “bouncing the ball back and forth to prevent the case from going forwards” because they are aware of “a substantial amount of evidence [that] is now available” to support Plaintiff’s claims. (Appellant’s Opening Br. at 3A (capitalization omitted).) As a result, Plaintiff requests a change of venue.

Having thoroughly reviewed Plaintiff’s briefing and the record on appeal, we find no abuse of discretion in the district court’s conclusion that Plaintiff failed to comply “in all particulars,” *Lappin*, 2009 WL 2848849 at *21, with the strict filing restrictions imposed upon him. *See Jackson v. Enforcer of Constitutional Policy*, 412 F. App’x 181, 183-84 (10th Cir. 2011) (“[W]e discern no abuse of discretion in the district court’s decision to impose the sanction of dismissal on [Plaintiff’s] instant pleading based on his violation of that court’s . . . filing restrictions.”). We further find no evidence to support Plaintiff’s contention that the district court and magistrate judges are biased or prejudiced against him. To the contrary, as we have previously noted, “even in light of Mr. Stine’s continual frivolous and harassing litigation that quite understandably has tested the

patience of the federal courts, the district court has repeatedly and thoughtfully considered his claims.” *Stine v. U.S. Fed. Bureau of Prisons*, 465 F. App’x 790, 799 (10th Cir. 2012). Finally, to the extent Plaintiff is challenging the terms or scope of the filing restrictions, he cannot collaterally attack those restrictions in this proceeding—a fact of which Plaintiff was previously made aware. *See id.*

For the foregoing reasons, we **AFFIRM** the district court’s denial of Plaintiff’s petition. Plaintiff’s motion for leave to proceed *in forma pauperis* on appeal is **GRANTED**. Plaintiff is reminded of his continuing obligation to make partial payments until the filing fee has been paid in full. All other pending motions are **DENIED**.

Entered for the Court

Monroe G. McKay
Circuit Judge