

FILED
United States Court of Appeals
Tenth Circuit

JUN 22 1990

ROBERT L. HOECKER
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

ROBERT FRANCIS SMITH, JR.,
Plaintiff-Appellant.

v.

RAY ROBERTS and A. J. TAYLOR,
Defendants-Appellees.

Nos. 90-3007 and 90-3028
(D.C. No. 89-3056-S)
(D. Kansas)

ORDER AND JUDGMENT*

Before ANDERSON, BALDOCK and EBEL, Circuit Judges.

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); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

The appellant Robert F. Smith is an inmate at the Kansas State Penitentiary at Lansing, Kansas. He appeals from the district court's dismissal of his claim against prison director Raymond Roberts and correctional officer A.J. Taylor. The essence of his complaint is that, when he was being moved from his cell to a segregation unit for disciplinary purposes, Taylor supervised an improper inventory of his personal belongings, resulting in the

* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

unexplained loss of three large-print Bibles from which he read daily. According to the prison's investigatory report, the packing officer told officials that all property found in the cell had been packed and that what appeared on the inventory sheet was all there was.

Prison director Roberts disapproved Smith's claim for reimbursement or replacement of the personal property on the grounds that (1) no negligence was discovered, (2) Smith had not indicated that he had notified the officer of any missing property when he received the property inventory form, and (3) Smith's signature was not on the inventory form. Thereafter, Smith filed a section 1983 claim, alleging that, in violation of prison regulations, he was neither shown the inventory form at the time the inventory was conducted nor asked to sign it. He claimed that loss of his Bibles deprived him of his constitutional rights, i.e., deprived him of his property without due process and denied his first amendment freedom to exercise his religion, both of which also constituted cruel and unusual punishment.

The district court dismissed the action and denied all relief, concluding that Smith might have a negligence claim that could be brought in state court but did not have a section 1983 claim. Smith appeals pro se. The appellees notified this court that they would neither be entering their appearance nor filing a response brief.

Accepting Smith's allegations as true, we nonetheless affirm the district court's decision that the allegation against Taylor fails to state a cause of action under 42 U.S.C. § 1983.

Moreover, assuming that Roberts' action in disapproving the property claim constituted involvement sufficient to bring him as a party before the court, we nonetheless conclude that the allegations against Roberts also do not rise to the level of a constitutional deprivation. Smith did not allege that either the "illegal confiscation" of his Bibles or Roberts' disapproval of his property claim was anything more than negligent. Assuming arguendo that loss or confiscation of the Bibles might constitute First, Fourteenth, or Eighth Amendment violations under some circumstances, nonetheless, ordinary negligence does not rise to the level of a constitutional deprivation. See Daniels v. Williams, 474 U.S. 327 (1986); Davidson v Cannon, 474 U.S. 344 (1986). See also Whitley v. Albers, 474 U.S. 344 (1986).

Dismissal AFFIRMED. The docket fee is waived. The mandate shall issue forthwith.

Entered for the Court:

Stephen H. Anderson,
Circuit Judge