

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

November 18, 2020

Christopher M. Wolpert
Clerk of Court

RICKEY WHITE,

Plaintiff - Appellant,

v.

JUDGE GARY L. LUMPKIN; JUDGE
BILL BLAZE; HUGO CHOCTAW
COUNTY OFFICIALS,

Defendants - Appellees.

No. 20-7040
(D.C. No. 6:20-CV-00118-RAW-SPS)
(E.D. Okla.)

ORDER AND JUDGMENT*

Before **MATHESON, KELLY**, and **EID**, Circuit Judges. **

Petitioner-Appellant Rickey White, a state inmate appearing pro se, appeals from the district court's dismissal of his civil rights action seeking damages. 42 U.S.C. § 1983; White v. Lumpkin, No. CIV 20-118-RAW-SPS, 2020 WL 3511577 (E.D. Okla. June 29, 2020). Mr. White's complaint alleges that he was unlawfully convicted of first-degree murder and placed in custody due to an invalid state

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

** 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.

warrant. Upon initial screening, the district court dismissed the action as frivolous because Mr. White could not demonstrate that his conviction or sentence was invalid. See Heck v. Humphrey, 512 U.S. 477, 486–87 (1994). We agree.

Prior to the district court’s dismissal, Mr. White had accrued two strikes for filing frivolous claims pursuant to Prison Litigation Reform Act (PLRA). See 28 U.S.C. § 1915(g); White v. Choctaw Cty. Ct. Clerk, No. CIV-10-421-RAW (E.D. Okla. Nov. 18, 2010); White v. Strubhar, No. CIV-02-378-S (E.D. Okla. July 24, 2003). Mr. White accrued a third strike from the district court’s decision dismissing this action as frivolous, see White v. Lumpkin, No. CIV 20-118-RAW-SPS, 2020 WL 3511577 (E.D. Okla. June 29, 2020); 28 U.S.C. § 1915(g), however “a third dismissal does not trigger the [PLRA] restriction when the third dismissal is the ruling being appealed.” Dawson v. Coffman, 651 F. App’x 840, 842 n.2 (10th Cir. 2016) (unpublished). Because we will dismiss this appeal as frivolous, he will have four strikes. See Jennings v. Natrona Cnty. Det. Ctr., 175 F.3d 775, 780–81 (10th Cir. 1999), overruled on other grounds by Coleman v. Tollefson, 575 U.S. 532 (2015).

We DISMISS the appeal as frivolous and assess a strike, DENY IFP, and remind Mr. White that he is responsible for paying the full amount of the filing fee.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge