

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

December 12, 2011

Elisabeth A. Shumaker
Clerk of Court

LIONEL KERSH,

Plaintiff - Appellant,

v.

ROBERT S. MUELLER,

Defendant - Appellee.

No. 11-1394
(D.C. No. 1:11-CV-01992-LTB)
(D. Colo.)

ORDER AND JUDGMENT*

Before **BRISCOE**, Chief Judge, **MURPHY** and **MATHESON**, Circuit Judges.

Lionel Kersh, a Colorado state prisoner proceeding pro se, filed a *Bivens* action in the United States District Court for the District of Colorado. The district court granted him leave to proceed in forma pauperis. Mr. Kersh named as the defendant Robert Mueller, director of the Federal Bureau of Investigation (FBI). Mr. Kersh claimed that

*After examining appellant's brief and the 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) and 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

his relatives transported him to outer space when he was 13 years old and that Mr. Mueller was liable for failing to investigate this incident. The district court dismissed the suit as factually frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).

Mr. Kersh filed a notice of appeal, and the district court denied leave to appeal in forma pauperis pursuant to 28 U.S.C. § 1915(a)(3), which provides that “[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.”

On appeal, Mr. Kersh argues that the district court erred in dismissing his complaint and renews his application to proceed in forma pauperis. We construe pro se filings liberally. *Perkins v. Kan. Dep't of Corr.*, 165 F.3d 803, 806 (10th Cir. 1999). We review a district court’s decision to dismiss an in forma pauperis complaint as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) for abuse of discretion. *See McWilliams v. Colorado*, 121 F.3d 573, 574-75 (10th Cir. 1997); *see also Conkle v. Potter*, 352 F.3d 1333, 1335 n.4 (10th Cir. 2003).

Mr. Kersh repeats the same implausible facts on appeal and offers no non-frivolous legal arguments. We affirm the district court’s dismissal of this suit as frivolous, deny Mr. Kersh’s renewed application to proceed in forma pauperis, and assess Mr. Kersh a “strike” pursuant to 28 U.S.C. § 1915(g).

ENTERED FOR THE COURT

Scott M. Matheson, Jr.
Circuit Judge