

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

November 22, 2017

Elisabeth A. Shumaker  
Clerk of Court

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DUANE LETROY BERRY,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA,

Defendant - Appellee.

No. 17-6176  
(D.C. No. 5:17-CV-00331-R)  
(W.D. Okla.)

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**ORDER AND JUDGMENT\***

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Before **KELLY, MURPHY**, and **MATHESON**, Circuit Judges.\*\*

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Plaintiff-Appellant Duane Letroy Berry, appearing pro-se, appeals from the district court's order dismissing his 42 U.S.C. § 1983 claim moving for "injunctive relief and to 'shut down the majority of Bank of America branches . . . in order to settle the trust's debt'" as frivolous. Order, Berry v. United States, 5:17-cv-00331-R (W.D. Okla. July 7, 2017), ECF No. 7. Mr. Berry has been found incompetent to stand trial on a federal charge based upon a delusional disorder. See United States v. Berry, No. 15-20743, 2017 WL 3777072 (E.D. Mich. Aug. 31, 2017) (Order

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

Authorizing Administration of Medication), appeal docketed, No. 17-2168 (6th Cir. Sept. 28, 2017).

Mr. Berry has also filed a Judicial Notice of “Outrageous Government Criminal Misconduct” claiming that he was improperly removed from federal jurisdiction and placed in state custody. We deny that motion because it is unrelated to Mr. Berry’s claim on appeal in this case and is the same claim as in a separate appeal currently pending before this court by Mr. Berry. See Berry v. Fox, No. 17-6192 (10th Cir. Aug. 22, 2017).

On appeal, Mr. Berry repeats his arguments made at the district court as well as alleges new causes of action not in his initial complaint. We decline to consider the new claims not presented in the original complaint on appeal. Mr. Berry’s claim under 42 U.S.C. § 1983 fails as a matter of law because § 1983 claims apply only to actions by state and local entities and not the United States government. Belhomme v. Widnall, 127 F.3d 1214, 1217 (10th Cir. 1997).

AFFIRMED. All pending motions are DENIED.

Entered for the Court

Paul J Kelly, Jr.  
Circuit Judge