

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

December 7, 2021

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

VICTOR CHARLES FOURSTAR, JR.,

Plaintiff - Appellant,

v.

JOE BIDEN; MONTANA
DEPARTMENT OF CORRECTIONS
UNKNOWN HEADS; MICHAEL
CARVAJAL, Director of Federal Bureau
of Prisons; UNKNOWN U.S.
SENTENCING COMMISSION
MEMBERS,

Defendants - Appellees.

No. 21-1292
(D.C. No. 1:21-CV-00414-LTB-GPG)
(D. Colo.)

ORDER AND JUDGMENT*

Before **MATHESON, BRISCOE, and PHILLIPS**, Circuit Judges.

Proceeding pro se,¹ Victor Fourstar appeals the district court’s dismissal of his complaint. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially help determine 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. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

¹ We liberally construe Fourstar’s filings, but we will not serve as his advocate. *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013).

BACKGROUND

While incarcerated,² Fourstar sued dozens of known and unknown defendants, alleging various conspiracies and constitutional violations related to his prison conditions. A magistrate judge concluded that Fourstar's complaint violated Federal Rule of Civil Procedure 8. The magistrate judge gave Fourstar several opportunities to amend his complaint. And though Fourstar filed two amended complaints, the deficiencies remained. Thus, the magistrate judge recommended that Fourstar's complaint be dismissed for violating Rule 8's pleading requirements.

The district court adopted the magistrate judge's recommendation and dismissed the complaint without prejudice. It also denied Fourstar's motion to proceed in forma pauperis on appeal, certifying under 28 U.S.C. § 1915(a)(3) that Fourstar's appeal would not be in good faith. Fourstar now appeals.

DISCUSSION

We review a district court's dismissal of a complaint under Rule 8 for abuse of discretion. *See Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1162 (10th Cir. 2007). Under Rule 8(a)(2), a complaint "must contain . . . a short and plain statement of the claim showing that the [plaintiff] is entitled to relief."

This isn't Fourstar's first appeal before this court. As was the case in *Fourstar v. Smith*, 748 F. App'x 856, 857 (10th Cir. 2019), his complaint lists various federal and state authorities but fails "to link those authorities to any of the factual

² When Fourstar filed his suit and notice of appeal, he was a federal prisoner in Colorado. He has since been released.

allegations he makes in the successive paragraphs.” And “[h]is brief on appeal largely recounts the factual allegations in his complaint.” *Id.* Thus, we again conclude that Fourstar’s complaint hasn’t complied with Rule 8. The district court therefore did not abuse its discretion in dismissing his complaint without prejudice.

We also find this appeal to be frivolous under 28 U.S.C. § 1915(e)(2)(B)(i). As a result, we assess a third strike under 28 U.S.C. § 1915(g). *See Davis v. Kan. Dep’t of Corr.*, 507 F.3d 1246, 1249 (10th Cir. 2007). Fourstar is now barred from bringing a civil action or an appeal from a civil action without prepaying the applicable filing fee unless he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).³

Additionally, we deny his request to proceed in forma pauperis and remind him that he must pay the appellate filing fee in full. *See Kinnell v. Graves*, 265 F.3d 1125, 1129 (10th Cir. 2001); *see also* 18 U.S.C. § 1915(b)(1).

³ We deny as moot Fourstar’s motion for reconsideration of our order denying him counsel in this appeal, motion for temporary injunctive relief, and supplemental motion for appointment of counsel and expert services.

CONCLUSION

For these reasons, we affirm the district court's dismissal of Fourstar's complaint, assess a third strike against him, and deny his request for in forma pauperis status.

Entered for the Court

Gregory A. Phillips
Circuit Judge