

ORAL ARGUMENT NOT REQUESTED

No. 99-7146

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

BOBBY BATTLE, et al.,

Plaintiffs-Appellees

and

THE UNITED STATES OF AMERICA,

Plaintiff-Intervener/Appellee

and

SIMON TOPPAH,

Appellant

v.

JAMES L. SAFFLE, et al.,

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA
Hon. Chief Judge Michael Burrage

BRIEF FOR THE UNITED STATES AS APPELLEE

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JURISDICTIONAL STATEMENT

Plaintiffs initiated this lawsuit claiming that the state defendants failed to operate the Oklahoma prison system in accordance with the Constitution. Pursuant to 28 U.S.C. 1331 and 1343, the district court had subject matter jurisdiction over this case.

On October 18, 1999, the district court entered its order that appellant Simon Toppah's motion to proceed in forma pauperis

is moot (R. 603).¹ Toppah filed his notice of appeal from that order on November 15, 1999 (R. 1190). For the reasons stated, pp. 7-10, infra, this Court lacks jurisdiction over this appeal because Toppah's in forma pauperis motion is moot.

STATEMENT OF ISSUE PRESENTED FOR REVIEW

Whether the district court erred in holding that an inmate's motion to proceed in forma pauperis is moot.

STATEMENT OF THE CASE

The lengthy procedural history of this class action has been set forth in a number of prior opinions by this Court and the district court. See, e.g., Battle v. Anderson, 788 F.2d 1421 (10th Cir. 1986); Battle v. Anderson, 376 F. Supp. 402 (E.D. Okla. 1974), aff'd in part, rev'd in part, 993 F.2d 1551 (10th Cir. 1993). This brief discusses those facts relevant to appellant Simon Toppah's appeal from the order that his in forma pauperis application is moot. Toppah contends that he needs in forma pauperis status to object to a settlement agreement and claims that the state defendants are not reasonably accommodating certain Native American religious practices (Br. 2-C).

1. In April 1972, Bobby Battle initiated this class action on behalf of himself and all other inmates within the Oklahoma State Penitentiary (OSP) system. Battle, 376 F. Supp. at 407. The complaint alleged that the state defendants' operation of Oklahoma prisons deprived the inmates of rights secured by the

¹ "R. ___" refers to the docket entry for a document. "Br. ___" refers to appellant Toppah's Opening Brief.

First, Eighth, and Fourteenth Amendments to the Constitution, in violation of 42 U.S.C. 1983. Id. at 407. In March 1973, the United States intervened in the action, pursuant to 42 U.S.C. 2000h-2, and its initial complaint alleged that the defendants racially segregated inmates in violation of the Fourteenth Amendment. The United States later amended its complaint to allege claims similar to those raised by the inmate class. Ibid.

Between 1974 and 1979, the district court found a number of constitutional violations and entered orders to remedy those violations. Battle v. Anderson, 708 F.2d 1523, 1525-1527 (10th Cir. 1983) (per curiam), cert. dismissed, 465 U.S. 1014 (1984); Battle v. Anderson, 447 F. Supp. 516, 517-519, 524 (E.D. Okla. 1977); 376 F. Supp. at 428-436. For instance, the court found, in 1974, no valid justification for either the state's policy of denying inmates, particularly Muslims, the opportunity to gather for corporate religious services, or its food distribution policy that prevents Muslims from abstaining from the consumption of pork. 376 F. Supp. at 427.

In 1978, the district court found that from September 1975, until the date of the hearing on this matter, there has been a continued "denial and undue interference with the rights of the Native American inmates at McAlester to exercise their religion." Battle v. Anderson, 457 F. Supp. 719, 733 (E.D. Okla. 1978). The district court noted, however, that the state defendants implemented a policy, effective August 4, 1978, to resolve the problem by allowing inmates "to meet on a group basis for native

religious, cultural or spiritual purposes." The policy also allows "individual access to spiritual leaders, use of religious paraphernalia and the receipt and possession of religious literature for all inmates." Id. at 734. The court further noted that the Warden at the time permitted "a medicine man to provide such services for the [Native American] inmates." Ibid.

The district court also entered orders to remedy the following constitutional violations: (a) use of chemical agents in a cruel and unusual manner; (b) racial discrimination with regard to inmate housing, discipline, and work assignments; (c) disciplinary procedures that violate due process; (d) inadequate medical care that violated the Eighth Amendment; (e) restrictions on inmates' First Amendment right to the receipt of correspondence and periodicals; and (f) not providing inmates adequate access to the courts. 376 F. Supp. at 429-436.

2. Since 1983, the plaintiffs and defendants have, at various times, litigated whether the defendants have brought the prison system into compliance with their constitutional responsibilities, and thus, whether the injunctions should be vacated. See, e.g., Battle, 708 F.2d 1523. Notably, on April 26, 1996, Congress enacted the Prison Litigation Reform Act (PLRA), Pub. L. No. 104-134, 110 Stat. 1321. That statute permits a State to seek the immediate termination of injunctive relief, if that relief was entered without findings that: (1) "the relief is narrowly drawn"; (2) "extends no further than necessary to correct the violation of the Federal right"; and (3)

"is the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. 3626(a)(1)(A). In July 1996, the state defendants moved, under the PLRA, for immediate termination of the remedial orders in the case (R. 8). In November 1996, this Court ordered the district court to consider the PLRA in determining, inter alia, whether the injunctions in this case should be modified or terminated. See Battle v. Fields, 100 F.3d 967 (10th Cir. 1996), cert. denied, 520 U.S. 1186 (1997).

On June 20, 1997, the district court terminated much of the remedial orders, including those concerning religious practices (R. 142). The court left in place, however, injunctions concerning: (1) "prison overcrowding, based upon Plaintiffs' allegations of triple celling"; (2) "conditions of confinement" at the East cellhouses at the Oklahoma State Penitentiary in McAlester and Granite; and (3) "the injunction against racial segregation and discrimination" (R. 133) (Slip Op. at 19-20). Pending before the district court, however, are the United States and Battle class's motions for reconsideration of the June 20, 1997, order. Accordingly, the United States and Battle class are presently litigating all injunctions that were outstanding prior to the court's June 20, 1997, order.

The State defendants, Battle class, and United States have proposed a settlement of the litigation about some of these injunctions (R. 297). The proposed settlement decree states, in pertinent part, that upon entry of the agreement, the parties

will agree to move for dismissal of a number of claims including claims concerning "religious practices" (R. 297 at 31). On August 12, 1999, the district court entered an order indicating that it would hear objections to the settlement at a hearing to be scheduled (R. 302).

STATEMENT OF FACTS

On September 24, 1999, Simon Toppah completed a form used to file motions to proceed in forma pauperis, pursuant to 28 U.S.C. 1915. The form has a series of questions tailored to determine whether an applicant is indigent and entitled to in forma pauperis status. In addition, the form asks the applicant to describe the nature of the action for which he seeks in forma pauperis status. In response, Toppah stated "Filing of Objections to Proposed Class Settlement And Urgence [sic] of Native Americans Religious Rights" (R. 348 at 1).

Also, on September 24, 1999, Toppah filed an objection to the proposed settlement in this matter (R. 349). Toppah claims an interest in the religious practices of "sweat lodge" and "the sacred pipe" (R. 350 at 3). He, therefore, requested that the "Native American class members' religious rights injunction" be modified or enforced to allow him to do so (R. 350 at 2, 10). Toppah also alleged inadequate representation by class counsel (R. 350 at 2). On October 12, 1999, Toppah filed an amendment to his objections to the settlement agreement in which he added arguments in support of his claims (R. 581).

On October 15, 1999, the district court entered an order granting Toppah's motion for leave to file amendments to his objections "in that the additional information will be considered a part of the movant's objection" (R. 582). Then, on October 18, 1999, the district court entered an order in which it deemed moot Toppah's motion to proceed in forma pauperis, stating that "such relief is unnecessary in this class action" (R. 603).

SUMMARY OF THE ARGUMENT

This Court lacks jurisdiction to review Toppah's appeal because the motion to proceed in forma pauperis is moot. The in forma pauperis statute, 28 U.S.C. 1915, permits inmates to file actions without prepaying court fees. Toppah applied for in forma pauperis status in order to file objections to the settlement being proposed in this class action. The court permitted Toppah to file his objections to the settlement and did not require Toppah to pay any fees. Toppah has, thus, suffered no cognizable injury, and his claim for in forma pauperis status is moot.

ARGUMENT

THE DISTRICT COURT CORRECTLY HELD THAT TOPPAH'S MOTION TO PROCEED IN FORMA PAUPERIS IS MOOT

A. Standard of Review

Whether a claim is moot is subject to de novo review. In re Western Pacific Airlines, Inc., 181 F.3d 1191, 1194 (10th Cir. 1999).

B. Discussion

Article III of the Constitution prohibits federal courts from exercising jurisdiction unless presented with actual "cases" or "controversies." Whitmore v. Arkansas, 495 U.S. 149, 154-155 (1990). The Supreme Court has developed the mootness and standing doctrines to identify cases that are appropriate for the exercise of federal court jurisdiction. Mootness can be described as standing "in a time frame." Arizonans for Official English v. Arizona, 520 U.S. 43, 68 n.22 (1997) (citations omitted). To have standing, a plaintiff must show that: (1) he has suffered an injury in fact; (2) the action he is challenging was the proximate cause of the injury; and (3) the injury will be redressed by a favorable decision. Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs. (TOC), Inc., 120 S. Ct. 693, 704 (2000). These three elements must always be present in a case or it will be moot and a federal court will lack jurisdiction over the matter. Ibid.

The district court correctly held that Toppah's claim was moot. Toppah has suffered no cognizable injury. On September 24, 1999, Toppah applied, under 28 U.S.C. 1915, to proceed in forma pauperis. The purpose of that statute is to allow courts to "authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor." 28 U.S.C. 1915(a)(1). In his in forma pauperis application, Toppah identified "Filing of Objections to Proposed Class Settlement And

Urgence [sic] of Native Americans Religious Rights" as the ground for his application (R. 348 at 1).

The district court has permitted Toppah to take the very legal action he sought in forma pauperis status to do. Furthermore, the court permitted him to do so without prepaying any fees. The same day Toppah filed his application for in forma pauperis status, he also filed objections to the settlement agreement (R. 349). On October 12, 1999, Toppah requested leave to amend his objections (R. 581). On October 15, 1999, the court granted that request (R. 582). Thus, it was appropriate for the district court to hold, on October 18, 1999, that the in forma pauperis motion is moot. Consequently, this Court should not review Toppah's appeal.

In support of his appeal, Toppah discusses the merits of his objections to the settlement agreement (Br. 2, 2-A). Those contentions cannot support the viability of his claim. Toppah misses the point that the district court will address those objections when it holds the fairness hearing. The district court's decision to address those claims further supports the conclusion that Toppah's in forma pauperis application was unnecessary.

Toppah's assertions that he intends to file a motion for summary judgment, and has filed other pleadings (Br. 2-B), are equally meritless. As an initial matter, he did not assert those actions as grounds for seeking in forma pauperis status. Furthermore, Article III's case or controversy principle requires

that a controversy must be ripe before one may invoke federal court jurisdiction. Wiley v. NCAA, 612 F.2d 473, 475 n.1 (10th Cir. 1979), cert. denied, 446 U.S. 943 (1980). Toppah's application for in forma pauperis status, in order to file such pleadings as a new complaint or a motion for summary judgment, would not be ripe until after the district court has adjudicated his objections to the settlement agreement.

CONCLUSION

This Court should rule that it lacks jurisdiction to review Toppah's appeal.

STATEMENT REGARDING ORAL ARGUMENT

Oral argument is not necessary in this case.

Respectfully submitted,

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