

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNETH KNANISHU,

Plaintiff,

No. 2:10-cv-0005 JAM JFM (PC)

vs.

SACRAMENTO SHERIFF’S DEPT.,
et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed an appeal arising from this court’s dismissal of plaintiff’s third amended complaint without leave to amend for failure to state a claim.

On March 30, 2011, the Ninth Circuit Court of Appeals referred the matter (the “Referral”) to this court for the “limited purpose of determining whether plaintiff’s in forma pauperis status should continue for this appeal or whether the appeal is frivolous or taken in bad faith.” (Doc. No. 61 (citing 28 U.S.C. § 1915(a); Hooker v. American Airlines, 302 F.3d 1091, 1092 (9th Cir. 2002) (revocation of in forma pauperis status is appropriate where district court find the appeal to be frivolous).)

This court is unaware of any change to plaintiff’s financial situation that would alter the in forma pauperis status he was previously given.

////

1 However, this court determines that plaintiff's appeal is frivolous. As detailed in
2 the Findings and Recommendations, plaintiff's allegations were that while he was a protective
3 custody inmate housed at Sacramento County Jail, defendant Deputy Jacoby, the control booth
4 officer, opened plaintiff's cell door and allowed an inmate named Caudle into the cell. Plaintiff
5 claimed Caudle beat him, causing numerous injuries. He further claimed that despite calls for
6 help from inmates in surrounding cells, aid did not arrive in a timely manner. Plaintiff sought
7 relief against multiple defendants, though it was found that despite four attempts, plaintiff failed
8 to state any charging allegations as to any defendant. Plaintiff's third amended complaint was
9 thus dismissed for failure to state a claim.

10 The Federal Rules of Appellate Procedure provide as follows:

11 A party who was permitted to proceed in forma pauperis in the district-court
12 action, or who was determined to be financially unable to obtain an adequate
13 defense in a criminal case, may proceed on appeal in forma pauperis without
14 further authorization, unless:

15 (A) the district court-before or after the notice of appeal is filed-certifies
16 that the appeal is not taken in good faith or finds that the party is not
17 otherwise entitled to proceed in forma pauperis and states in writing its
18 reasons for the certification or finding;

19 Fed. R. App. P. 24(a)(3)(A).

20 Analogously, 28 U.S.C. § 1915(a)(3) provides "[a]n appeal may not be taken in
21 forma pauperis if the trial court certifies in writing that it is not taken in good faith." The good
22 faith standard is an objective one. See Coppedge v. United States, 369 U.S. 438, 445 (1962). A
23 plaintiff satisfies the "good faith" requirement if he seeks review of any issue that is "not
24 frivolous." Gardner v. Pogue, 558 F.2d 548, 551 (9th Cir. 1977) (quoting Coppedge, 369 U.S. at
25 445). For purposes of section 1915, an appeal is frivolous if it lacks any arguable basis in law or
26 fact. Neitzke v. Williams, 490 U.S. 319, 325, 327 (1989); Franklin v. Murphy, 745 F.2d 1221,
1225 (9th Cir. 1984). A complaint lacks an arguable basis in law if controlling authority requires
"a holding that the facts as alleged fail to establish even an arguable claim as a matter of law."
Guti v. INS, 908 F.2d 495, 496 (9th Cir. 1990).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Thus, in response to the Referral, for all the foregoing reasons and for those described in detail in the Findings and Recommendations that were ultimately adopted as the order of the court, this court determines that plaintiff's appeal is not taken in good faith.

IT IS SO ORDERED.

DATED: May 9, 2011

/s/ John A. Mendez
UNITED STATES DISTRICT JUDGE