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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ROBERT D. GIBSON,

CASE NO. 1:03-cv-05445 LJO DLB PC

Plaintiff,

ORDER DIRECTING CLERK’S OFFICE TO
SEND PLAINTIFF COPIES OF COURT
DOCUMENTS, AND DENYING REQUEST
FOR TRANSCRIPTS AT GOVERNMENT
EXPENSE

v.

WARDEN OF CORCORAN STATE
PRISON, et al.,

(Doc. 431)

Defendants.

_____ /

Plaintiff Robert D. Gibson (“plaintiff”) is a state prisoner who was proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Following jury trial, judgment was entered in favor of the defendants, and Plaintiff filed a notice of appeal on June 16, 2009. On June 25, 2009, plaintiff filed a motion seeking excerpts of the record as well as copies of transcripts at government expense. (Doc. 431.)

In accordance with Ninth Circuit Rule 30-3, plaintiff’s request for copies of Court Docket Documents #42, 101, 148, 195, 230, 239, 208, 221, 231 and 244 is HEREBY GRANTED and the Clerk’s Office is directed to send plaintiff the excerpts of record.

With respect to Plaintiff’s requests for copies of transcripts for the pre-trial conference, motions in limine hearing and trial, a litigant who has been granted in forma pauperis status may move to have transcripts produced at government expense. See 28 U.S.C. § 753(f); McKinney v. Anderson, 924 F.2d 1500, 1511-12 (9th Cir.1991) (subsequent history omitted). Two statutes must be considered whenever the district court receives a request to prepare transcripts at the

1 government's expense. First, 28 U.S.C. § 1915(c) defines the limited circumstances under which
2 the court can direct payment the government to pay for transcripts for a litigant proceeding in forma
3 pauperis.

4 (c) Upon the filing of an affidavit in accordance with subsections (a) and (b) and the
5 prepayment of any partial filing fee as may be required under subsection (b), the
6 court may direct payment by the United States of the expenses of (1) printing the
7 record on appeal in any civil or criminal case, if such printing is required by the
8 appellate court; (2) preparing a transcript of proceedings before a United States
9 magistrate judge in any civil or criminal case, if such transcript is required by the
10 district court, in the case of proceedings conducted under section 636(b) of this title
11 or under section 3401(b) of title 18, United States Code; and (3) printing the record
12 on appeal if such printing is required by the appellate court, in the case of
13 proceedings conducted pursuant to section 636(c) of this title. Such expenses shall
14 be paid when authorized by the Director of the Administrative Office of the United
15 States Courts.

16 28 U.S.C. § 1915(c).

17 Second, 28 U.S.C. § 753(f) allows the court to order the government to pay for transcripts
18 only if “the trial judge or a circuit judge certifies that the appeal is not frivolous (but presents a
19 substantial question).” 28 U.S.C. § 753(f). A request for a transcript at government expense should
20 not be granted unless the appeal presents a substantial question. Henderson v. United States, 734
21 F.2d 483, 484 (9th Cir. 1984). Based on Plaintiff's notice of appeal, the Court finds that the appeal
22 does not present a substantial question and the request for transcripts at government expense is
23 denied. Plaintiff may renew his request for transcripts at government expense with the appellate
24 court by filing a motion there if he wishes.

25 In addition, Plaintiff is notified that the appellate court has access to the court's file in this
26 case, and will request any necessary documents that are in the record directly from this court.

27 Based on the foregoing, Plaintiff's motion for a transcript of the pre-trial conference, motions
28 in limine, and trial at government expense is HEREBY DENIED.

IT IS SO ORDERED.

Dated: July 16, 2009

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE