

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  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CHRISTINE JONES,	CASE NO. 1:08-cv-01383-LJO-GBC (PC)
Plaintiff,	ORDER FINDING THAT PLAINTIFF IS
v.	ENTITLED TO PROCEED IN FORMA
	PAUPERIS ON APPEAL FILED MAY 16,
	2011
CALIFORNIA DEPARTMENT OF	(ECF No. 22)
CORRECTIONS, et al.,	
Defendants.	ORDER DIRECTING CLERK'S OFFICE TO
	SERVE COPY OF ORDER ON NINTH
	/ CIRCUIT

**ORDER**

Christine Jones ("Plaintiff") proceeded pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. On April 22, 2011, the District Court adopted the Magistrate Judge's Findings and Recommendation dismissing Plaintiff's action, with prejudice, for failure to state any cognizable claims. (ECF Nos. 15 & 17.) On May 16, 2011, Plaintiff filed a notice of appeal and on May 25, 2011, the Ninth Circuit remanded for the limited purpose of determining whether in forma pauperis status should continue for this appeal or whether the appeal is frivolous or taken in bad faith. (ECF Nos. 19 & 22.)

Pursuant to the Federal Rules of Appellate Procedure,

A party who was permitted to proceed in forma pauperis in the district-court action . . . may proceed on appeal in forma pauperis without further authorization, unless:

(A) the district court - before or after the notice of appeal is filed - certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its

1 reasons for the certification or finding;  
2 or

3 (B) a statute provides otherwise.

4 Fed. R. App. P. 24(a)(3).

5 The district clerk must immediately notify the parties and the court of appeals  
6 when the district court does any of the following:

7 (A) denies a motion to proceed on appeal in forma pauperis;

8 (B) certifies that the appeal is not taken in good faith; or

9 (C) finds that the party is not otherwise entitled to proceed in forma pauperis.

10 Fed. R. App. P. 24(a)(4).

11 Because Plaintiff proceeded in forma pauperis in this action, Plaintiff is entitled to  
12 proceed in forma pauperis on appeal unless the Court finds her appeal is not taken in good  
13 faith or finds that she is not otherwise entitled to proceed in forma pauperis. As set forth  
14 below by this Order, the Court finds that Plaintiff is entitled to proceed in forma pauperis  
15 on appeal.

16 “An appeal may not be taken in forma pauperis if the trial court certifies in writing  
17 that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3). “In the absence of some evident  
18 improper motive, the applicant’s good faith is established by the presentation of any issue  
19 that is not plainly frivolous.” Ellis v. United States, 356 U.S. 674 (1958). An action is  
20 frivolous “where it lacks an arguable basis either in law or in fact.” Neitzke v. Williams, 490  
21 U.S. 319, 325 (1989). In other words, the term “frivolous”, as used in § 1915 and when  
22 applied to a complaint, “embraces not only the inarguable legal conclusion, but also the  
23 fanciful factual allegation.” Id.

24 Pursuant to 28 U.S.C. § 1291, Plaintiff can appeal the Court’s April 22, 2011 Order  
25 dismissing the action as a final and appealable order. Here, the Court issued Findings and  
26 Recommendation, recommending dismissal of the action due to Plaintiff’s repeated failure  
27 to state a cognizable claim. (ECF No. 15.) The Finding and Recommendation was  
28 adopted, in full, over Plaintiff’s Objections. (ECF Nos. 16 & 17.)

Given that Plaintiff’s action was dismissed for failure to state a claim and the  
absence of improper motive, Plaintiff’s appeal is not plainly frivolous. It does not appear

1 to lack an arguable basis either in law or in fact.

2 Based on the foregoing, it is HEREBY ORDERED that:

3 Plaintiff's appeal is taken in good faith. 28 U.S.C. § 1915(a). The Clerk's Office  
4 shall serve a copy of this order on the Ninth Circuit.

5  
6 IT IS SO ORDERED.

7 Dated: June 6, 2011

8   
UNITED STATES MAGISTRATE JUDGE