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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANTHONY JOHNSON,
Plaintiff,
v.
L GONZALES and A. MURRIETA,
Defendants.

Case No. 1:09-cv-01264-BAM (PC)
ORDER DENYING MOTIONS FOR TRIAL
TRANSCRIPT AT GOVERNMENT
EXPENSE
(ECF Nos. 191, 192)

Plaintiff Anthony Johnson, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on July 21, 2009. This action for damages proceeded against Defendants Gonzales and Murrieta for violating Plaintiff's rights under the Eighth Amendment of the United States Constitution. Following a two-day trial by jury, judgment was entered for Defendants and against Plaintiff on April 29, 2015. On May 6, 2015, Plaintiff filed a motion for a copy of the trial transcript for purposes of appeal due to Plaintiff's in forma pauperis status, along with a motion for waiver of the costs of the trial transcript.¹

A litigant who has been granted in forma pauperis status may move to have transcripts produced at government expense. Two statutes must be considered whenever the district court receives a request to prepare transcripts at the government's expense. First, 28 U.S.C. § 1915(c)

¹ On May 7, 2015, Plaintiff also filed a motion for judgment notwithstanding the verdict pursuant to Federal Rule of Civil Procedure 59. Plaintiff's motion for judgment is pending.

1 defines the limited circumstances under which the Court can direct the government to pay for
2 transcripts for a litigant proceeding in forma pauperis.

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

15 28 U.S.C. § 1915(c).

16 Second, 28 U.S.C. § 753(f) allows the Court to order the government to pay for transcripts
17 only if “the trial judge or a circuit judge certifies that the appeal is not frivolous (but presents a
18 substantial question).” A request for a transcript at government expense should not be granted
19 unless “the appeal presents a substantial issue.” *Henderson v. United States*, 734 F.2d 483, 484
20 (9th Cir. 1984).

21 In this instance, Plaintiff has not filed a notice of appeal. Given the absence of an appeal,
22 there also is no basis upon which to find that Plaintiff’s appeal presents any substantial question.
23 Accordingly, Plaintiff’s motions for the trial transcript at government expense are HEREBY
24 DENIED.

25 IT IS SO ORDERED.

26 Dated: May 8, 2015

27 /s/ Barbara A. McAuliffe
28 UNITED STATES MAGISTRATE JUDGE