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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ALVIN R. ROSS,

Plaintiff,

v.

DERRAL G. ADAMS, et al.,

Defendant.

CASE NO. 1:10-cv-02075-AWI-GBC PC

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DENYING PLAINTIFF’S
MOTION FOR RECONSIDERATION

(Doc. 9)

OBJECTIONS DUE WITHIN FIFTEEN DAYS

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Plaintiff Alvin R. Ross, a state prisoner proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983 on November 9, 2010. (Doc. 1.) On December 13, 2010, the Court reviewed Plaintiff’s records and found that he had three prior strikes pursuant to 28 U.S.C. § 1915(g). Upon review of the complaint it was determined that Plaintiff did not meet the imminent danger exception, Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007), and he was ineligible to proceed in forma pauperis in this action. The action was dismissed without prejudice for Plaintiff to refile with the filing fee. (Doc. 7.) Currently pending before the Court is a motion for reconsideration, filed December 27, 2010. (Doc. 9.)

Plaintiff seeks leave to proceed in forma pauperis, stating that the Court was in error in finding that he has three strikes. Plaintiff contends that he never filed a civil matter entitled Ross v. Arnelle, 1:98-cv-05303-REC/HGB. The Court has reviewed the matter in question.

Ross v. Arnelle, 1:98-cv-05303-REC/HGB, was filed on March 30, 1998, by Alvin Ronnel Ross, inmate number C-11519, residing at Corcoran State Prison, against H. Jesse Arnell and James

1 Hammerstone. The matter was dismissed on November 13, 1998, as frivolous. The Court finds that
2 the name, inmate number, and prison are the same as the Plaintiff in the current action. Accordingly
3 it is HEREBY RECOMMENDED that the motion for reconsideration be DENIED.

4 These findings and recommendations will be submitted to the United States District Judge
5 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fifteen (15)
6 days after being served with these findings and recommendations, Plaintiff may file written
7 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
8 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
9 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d
10 1153 (9th Cir. 1991).

11 IT IS SO ORDERED.

12 Dated: December 30, 2010

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15 UNITED STATES MAGISTRATE JUDGE
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