

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

RONALD DEE YOUNG,

1:10-cv-02278-GBC (PC)

Plaintiff,

ORDER FINDING THAT PLAINTIFF IS NOT ENTITLED TO PROCEED IN FORMA PAUPERIS ON APPEAL FILED MAY 18, 2011 (Docs. 29, 30)

v.

J. LEWIS, et al.,

Defendants.

ORDER DIRECTING CLERK’S OFFICE TO SERVE COPY OF ORDER ON NINTH CIRCUIT

Ronald Dee Young (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. On May 10, 2011, the Court dismissed Plaintiff’s action based on finding that Plaintiff had failed to exhaust administrative remedies after Plaintiff submitted a document demonstrating he exhausted after the date he filed the complaint. (Doc. 27). On May 18, 2011, Plaintiff filed a notice of appeal (Doc. 29) and on June 7, 2011, the Ninth Circuit referred the matter to the Court 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. (Doc. 32).

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 reasons for the certification or finding; or (B) a statute provides otherwise.

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

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

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

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

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

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

6 Because Plaintiff is proceeding in forma pauperis in this action, Plaintiff is entitled to proceed

7 in forma pauperis on appeal unless the Court finds his appeal is not taken in good faith or finds that

8 he is not otherwise entitled to proceed in forma pauperis. As it was obvious through Plaintiff's

9 submitted documents that Plaintiff had failed to exhaust administrative remedies prior to filing the

10 action, his appeal of the dismissal without prejudice is frivolous and is not taken in good faith.

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

12 Plaintiff's appeal is frivolous and not taken in good faith. 28 U.S.C. § 1915(a). The Clerk's

13 Office shall serve a copy of this order on the Ninth Circuit.

14

15 IT IS SO ORDERED.

16 Dated: June 16, 2011

17


UNITED STATES MAGISTRATE JUDGE

18

19

20

21

22

23

24

25

26

27

28