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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

OMAR GARCIA, JR.,
Plaintiff,
v.
TULARE COUNTY MAIN JAIL, et al.,
Defendants.

Case No. 1:14-cv-00476-BAM (PC)
Appeal No. 18-16707
ORDER REGARDING *IN FORMA PAUPERIS*
STATUS ON APPEAL
(ECF No. 57)

Plaintiff Omar Garcia, Jr., (“Plaintiff”), a state prisoner proceeding *pro se* and *in forma pauperis*, initiated this civil rights action pursuant to 42 U.S.C. § 1983 while he was detained at the Bob Wiley Detention Facility in Visalia, California. All parties consented to the jurisdiction of a United States Magistrate Judge. (ECF Nos. 5, 19.)

On August 16, 2017, Defendants moved for summary judgment in this action. Plaintiff filed an opposition which failed to comply with Federal Rule of Civil Procedure 56(c)(1)(A) and Local Rule 260(b), and with the consent of Defendants, the Court granted Plaintiff an opportunity to file a supplemental response. Plaintiff was granted an extension of time, but thereafter failed to file his response or otherwise communicate with the Court.

On June 7, 2018, the Court dismissed this action, with prejudice, for failure to prosecute and failure to obey court orders. Judgment was entered the same date. (ECF Nos. 50, 51.)

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1 On July 30, 2018, Plaintiff filed a motion for relief from default, which the Court
2 construed as a motion for reconsideration pursuant to Federal Rule of Civil Procedure 60(b).
3 Plaintiff argued that he was entitled to relief from judgment because his failure to file a response
4 was due to the actions and inactions of Plaintiff's jailhouse lawyer, Inmate Chavira. (ECF No.
5 52.) The Court denied the motion, finding that Plaintiff failed to demonstrate "both injury and
6 circumstances beyond his control." (ECF No. 53 (quoting Latshaw v. Trainer Wortham & Co.,
7 Inc., 452 F.3d 1097, 1103 (9th Cir. 2008).) On September 6, 2018, Plaintiff filed a notice of
8 appeal. (ECF No. 54.)

9 On October 2, 2018, the Ninth Circuit Court of Appeals referred the matter back to this
10 Court for the limited purpose of determining whether *in forma pauperis* status should continue for
11 the appeal. See 28 U.S.C. § 1915(a)(3); see also Hooker v. Amer. Airlines, 302 F.3d 1091 1092
12 (9th Cir. 2002) (revocation of *in forma pauperis* status is appropriate where district court finds the
13 appeal to be frivolous).

14 As noted above, Plaintiff was granted multiple opportunities to file an opposition to
15 Defendants' motion for summary judgment in compliance with the Federal and Local Rules.
16 Plaintiff failed to do so. Plaintiff's only justification for this failure is that he received help from
17 a jailhouse lawyer who did not follow through on his promises. However, as explained in the
18 Court's order denying Plaintiff's motion for reconsideration, his reliance upon jailhouse lawyers
19 did not constitute "circumstances beyond his control" such that Plaintiff is entitled to relief from
20 judgment. See Latshaw, 452 F.3d at 1103; see also Tacho v. Martinez, 862 F.2d 1376, 1381 (9th
21 Cir. 1988) (habeas corpus petitioner's reliance upon jailhouse lawyers did not constitute cause to
22 excuse a procedural default). Despite the failure of Plaintiff or his jailhouse lawyer to file a
23 proper opposition to Defendant's motion for summary judgment, Plaintiff is now appealing
24 dismissal of this action.

25 Based on the foregoing, IT IS HEREBY ORDERED that:

- 26 1. The appeal is declared frivolous and not taken in good faith;
- 27 2. Pursuant to 28 U.S.C. § 1915(a)(3), Plaintiff is not entitled to proceed *in forma pauperis*
28 in Appeal No. 18-16707, filed September 6, 2018;

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- 3. Pursuant to Federal Rule of Appellate Procedure 24(a)(4), this order serves as notice to the parties and the United States Court of Appeals for the Ninth Circuit of the finding that Plaintiff is not entitled to proceed *in forma pauperis* for this appeal; and
- 4. The Clerk of the Court is directed to serve a copy of this order on the parties and the United States Court of Appeals for the Ninth Circuit.

IT IS SO ORDERED.

Dated: October 5, 2018

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE