

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 GREGORY ELL SHEHEE,

12 Plaintiff,

13 vs.

14 FLORES, et al.,

15 Defendants.
16
17
18

1:14-cv-00589-LJO-GSA-PC
Appeal case no. 15-15716

ORDER DENYING PLAINTIFF'S
MOTION TO PROCEED IN FORMA
PAUPERIS ON APPEAL
(Docs. 24, 27.)

19 **I. BACKGROUND**

20 Gregory Ell Shehee ("Plaintiff") is a Fresno County Jail inmate, proceeding pro se with
21 this civil rights action pursuant to 42 U.S.C. § 1983. This case was dismissed by the court on
22 April 2, 2015, with prejudice, for failure to state a claim upon which relief may be granted
23 under § 1983, and judgment was entered. (Docs. 21, 22.)

24 On April 8, 2015, Plaintiff appealed the district court's decision to the Ninth Circuit
25 court of appeals, and filed a motion for leave to proceed in forma pauperis on appeal. (Docs.
26 23, 24.) On April 14, 2015, the Ninth Circuit referred the case to the district court for the
27 limited purpose of determining whether in forma pauperis status should continue for this appeal
28 or whether the appeal is frivolous or taken in bad faith. (Doc. 27.)

1 **II. IN FORMA PAUPERIS STATUS ON APPEAL**

2 “An appeal may not be taken in forma pauperis if the trial court certifies in writing that
3 it is not taken in good faith.” 28 U.S.C. § 1915(a)(3). The test for allowing an appeal in forma
4 pauperis is easily met; the good faith requirement is satisfied if the appellant seeks review of
5 any issue that is not frivolous. Gardner v. Pogue, 558 F.2d 548, 550-51 (9th Cir. 1977) (citing
6 Coppedge v. United States, 369 U.S. 438, 445, 82 S.Ct. 917 (1962)) (quotation marks omitted);
7 see also Hooker v. American Airlines, 302 F.3d 1091, 1092 (9th Cir. 2002) (if at least one issue
8 or claim is non-frivolous, the appeal must proceed in forma pauperis as a whole). An action is
9 frivolous “where it lacks an arguable basis either in law or in fact.” Neitzke v. Williams, 490
10 U.S. 319, 325, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989). In other words, the term “frivolous”,
11 as used in § 1915 and when applied to a complaint, “embraces not only the inarguable legal
12 conclusion, but also the fanciful factual allegation.” Id.

13 Plaintiff’s appeal lacks any arguable basis in law or fact. The court dismissed
14 Plaintiff’s complaint for failure to state a claim, based on his failure to comply with the court’s
15 order dismissing the complaint for failure to state a claim, with leave to amend. (Doc. 21.)
16 Plaintiff argues that he could not timely file documents because he lacked access to his
17 documents at the Fresno County Jail. However, according to court records, Plaintiff was not
18 incarcerated at the jail until mid-February 2015, long after the deadline to amend his complaint
19 had expired. (Court Record.) Upon re-review of the complaint, the court finds Plaintiff’s
20 allegations to be vague. Plaintiff fails to specifically charge each defendant with conduct
21 indicating that he or she deprived Plaintiff of a protected interest. Therefore, Plaintiff fails to
22 state a claim against any of the defendants under § 1983. Plaintiff was granted an opportunity
23 to amend the complaint, but he failed to do so. Thus, the district court finds Plaintiff’s appeal
24 to be frivolous, and Plaintiff’s motion to proceed in forma pauperis on appeal shall be denied.

25 **III. CONCLUSION**

26 Accordingly, IT IS HEREBY ORDERED that:

- 27 1. Plaintiff’s motion to proceed in forma pauperis on appeal, filed on April 8, 2015,
28 is DENIED; and

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

2. The Clerk is directed to serve a copy of this order on the Ninth Circuit Court of Appeals.

IT IS SO ORDERED.

Dated: April 15, 2015

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE