

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

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL J. BRODHEIM,

Plaintiff,

No. CIV S-02-0573 FCD EFB P

vs.

MICHAEL CRY, et al.,

Defendant.

ORDER FINDING APPEAL NOT TAKEN IN
GOOD FAITH

_____/

Plaintiff is a prisoner without counsel seeking relief for civil rights violations. *See* 42 U.S.C. § 1983. He proceeds on appeal of this court’s order adopting the magistrate judge’s July 20, 2007 findings and recommendation to grant defendants’ motion for summary judgment.

An appeal not taken in good faith is one that is frivolous, meaning the result is obvious or the arguments are wholly without merit. *See Cannon v. Hawaii Corp. (In re Hawaii Corp.)*, 796 F.2d 1139, 1144 (9th Cir.1986) (quoting *Libby, McNeill and Libby v. City National Bank*, 592 F.2d 504, 515 (9th Cir.1978); *Jaeger v. Canadian Bank*, 327 F.2d 743, 746 (9th Cir.1964).

Plaintiff alleged in his complaint that defendants retaliated against him for exercising his First Amendment right to petition the government for redress of grievances, and that defendants’ actions had the effect of chilling his further exercise of his First Amendment rights.

//////

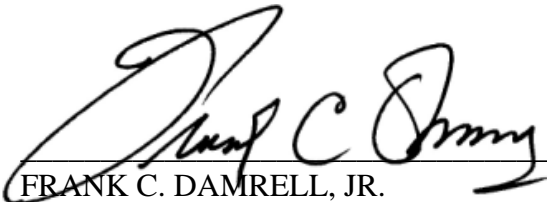
1 The magistrate judge found that there was no evidence to support plaintiff's claim that
2 defendant Cry's handwritten note on plaintiff's appeal form, to wit, "I'd also like to warn you to
3 be careful what you write, req[ue]st on this form," was retaliatory. Further, the magistrate judge
4 found that prison officials have a legitimate penological purpose in admonishing inmates as to the
5 manner and tone they adopt with prison authorities. *Bradley v. Hall*, 64 F.3d 1276, 1280 (9th Cir.
6 1995).

7 In his objections to the findings and recommendations, plaintiff stated that the magistrate
8 judge overlooked evidence that defendants attempted to have plaintiff transferred for exercising
9 his First Amendment rights, that speech can be chilled even when not silenced, and that the
10 magistrate judge erroneously found that plaintiff's comments to defendant Cry in the first place
11 were disrespectful. Plaintiff did not show that the magistrate judge overlooked any facts that call
12 the findings into question, and he cannot adduce new evidence on appeal. Nor did plaintiff
13 demonstrate that there was any legal error in the findings and recommendations.

14 For these reasons, the court finds that plaintiff's appeal is not taken in good faith.

15 So ordered.

16 Dated: February 4, 2008.

17
18 
19 FRANK C. DAMRELL, JR.
20 UNITED STATES DISTRICT JUDGE
21
22
23
24
25
26