

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

CLARENCE O. SMITH,

Plaintiff,

No. CIV S-02-1473 LKK GGH P

VS.

M. R. MALDONADO, et al.,

Defendants.

ORDER

Plaintiff has died pending defendants' appeal in this matter, and the district court's September 27, 2006, Order,¹ granting in part and denying in part defendants' motion for summary judgment, has been vacated and the case has been remanded from the Ninth Circuit with instructions that it be dismissed due to the death of Clarence O. Smith, plaintiff/appellee. Defendants Maldonado and Scharosch had appealed from the denial of their claim of entitlement in the motion for summary judgment to qualified immunity in this action, brought pursuant to 42 U.S.C. § 1983, alleging a violation of plaintiff's Eighth Amendment rights when he was housed with an inmate who thereafter attacked him.

111

11111

¹ Filed on September 28, 2007, at docket # 93.

1 Accordingly, IT IS ORDERED that, pursuant to the mandate, filed in this court on
2 April 3, 2009, this case is dismissed due to the death of plaintiff/appellee Clarence O. Smith.
3 DATED: April 14, 2009.

4
5 
6 LAWRENCE K. KARLTON
7 SENIOR JUDGE
8 UNITED STATES DISTRICT COURT