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

ERNEST LEE VADEN,

Plaintiff,

No. 2:10-cv-1676 KJN P

vs.

KATHLEEN DICKENSON, et al.,

Defendants.

ORDER

_____/

Plaintiff is a state prisoner proceeding without counsel, in this action filed pursuant to 42 U.S.C. § 1983. On June 9, 2011, this court dismissed this action for failure to state a potentially cognizable claim.¹ (Dkt. No. 6.) Plaintiff challenged a state regulation that authorizes a prison to deny contact visits with minors to inmates convicted of murder. 15 C.C.R. § 3173.1(d). Discretion for granting an exception under the regulation lies with the prison’s Institutional Classification Committee. *Id.* This court found that plaintiff had failed to state a potentially cognizable federal constitutional claim because the challenged regulation is reasonably related to legitimate penological interests. *See Turner v. Safley*, 482 U.S. 78, 89-90 (1987); *accord, Valdez v. Woodford*, 2007 WL 1848032, *5 (N.D. Cal. 2007). The court

¹ Plaintiff consented to the jurisdiction of the magistrate judge for all purposes. (Dkt. No. 4.) *See* 28 U.S.C. § 636(c) and E.D. Cal. L. R. (“Local Rule”) 305(a).

1 concluded that amendment of the complaint would be futile, and dismissed plaintiff's action
2 without leave to amend.

3 After entry of judgment, plaintiff filed a Notice of Appeal in the Ninth Circuit
4 Court of Appeals. (Dkt. Nos. 10, 11.) The Court of Appeals has now referred to this court the
5 limited question "whether in forma pauperis status should continue for this appeal or whether the
6 appeal is frivolous or taken in bad faith. See 28 U.S.C. § 1915(a)(3); see also Hooker v.
7 American Airlines, 302 F.3d 1091, 1092 (9th Cir. 2002) (revocation of forma pauperis status is
8 appropriate where district court finds the appeal to be frivolous)." (Dkt. No. 13; duplicate filing
9 at Dkt. No. 14.)

10 Section 1915(a)(3), United States Code, title 28, provides that "[a]n appeal may
11 not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good
12 faith." The good faith standard is an objective one. Coppedge v. United States, 369 U.S. 438,
13 445 (1962) ("'good faith' in this context must be judged by an objective standard," and is
14 "demonstrated when [an appellant] seeks appellate review of any issue not frivolous"). Thus, a
15 plaintiff satisfies the "good faith" requirement if he "seeks review of any issue that is 'not
16 frivolous.'" Gardner v. Pogue, 558 F.2d 548, 551 (9th Cir.1977) (quoting Coppedge, 369 U.S. at
17 445). A claim is legally frivolous when, in pertinent part, it is "based on an indisputably
18 meritless legal theory." Neitzke v. Williams, 490 U.S. 319, 327 (1989).

19 This action, and hence plaintiff's appeal, is premised on plaintiff's singular claim
20 that the challenged regulation has been unfairly applied to him. For the reasons previously stated
21 by this court, and summarized above, this claim is based on "an indisputably meritless legal
22 theory," Neitzke, supra, 490 U.S. at 327, rendering plaintiff's appeal frivolous. Plaintiff makes
23 no other claims. Cf. Hooker, supra, 302 F.3d at 1092 (leave to proceed in forma pauperis on
24 appeal must be granted if at least one claim is non-frivolous).

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Accordingly, IT IS HEREBY ORDERED that plaintiff's in forma pauperis status is revoked for purposes of appeal.

SO ORDERED.

DATED: July 15, 2011


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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