

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

DEREK TODD,

No. 2:12-cv-01323-MCE-EFB

Plaintiff,

vs.

ORDER

RICHARD CURTIS, Placer County
Superior Court Judge; PLACER
COUNTY SUPERIOR COURT,

Defendants.

_____ /

Plaintiff proceeds pro se with this civil rights lawsuit under 42 U.S.C. § 1983. On August 7, 2012, this court dismissed the case without leave to amend for plaintiff's failure to state a claim and for lack of subject-matter jurisdiction. Plaintiff has filed a notice of appeal, and the Ninth Circuit has asked the Court to determine whether plaintiff's in forma pauperis status should continue for the appeal or should be revoked because the appeal is frivolous or taken in bad faith. ECF No. 11.

///

1 For the following reasons, the Court finds the appeal frivolous
2 and, accordingly, revokes plaintiff's in forma pauperis status.

3 Pursuant to 28 U.S.C. § 1915(a)(3), "[a]n appeal may not be
4 taken in forma pauperis if the trial court certifies in writing
5 that it is not taken in good faith." The good faith standard is
6 an objective one. See Coppedge v. United States, 369 U.S. 438,
7 445 (1962).

8 A plaintiff satisfies the "good faith" requirement if he or
9 she seeks review of any issue that is "not frivolous."

10 Gardner v. Pogue, 558 F.2d 548, 551 (9th Cir. 1977) (quoting
11 Coppedge, 369 U.S. at 445). For purposes of § 1915, an appeal is
12 frivolous if it lacks any arguable basis in law or fact.

13 Neitzke v. Williams, 490 U.S. 319, 325, 327 (1989). For those
14 reasons stated in the magistrate judge's May 29, 2012, Findings
15 and Recommendations, which were adopted by this Court on
16 August 7, 2012, this Court now holds that the instant Complaint
17 is frivolous. The Court thus certifies that Plaintiff's appeal
18 is not taken in good faith.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

1 Accordingly, it is hereby ORDERED that the Clerk of Court is
2 directed to notify the Ninth Circuit Court of Appeals that the
3 court certifies, pursuant to Rule 24(a)(3)(A) of the Federal
4 Rules of Appellate Procedure, that plaintiff's appeal is not
5 taken in good faith, and he must therefore seek further
6 authorization from the Court of Appeals pursuant to Rule 24(a)(5)
7 to obtain leave to proceed in forma pauperis on appeal.

8 IT IS SO ORDERED.

9 Dated: September 20, 2012

10
11 
12 _____

MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE