

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

BERLAN LYNELL DICEY,

Plaintiff,

No. 2:12-cv-01407 AC P

vs.

OSCAR J. SMITH,

Defendant.

ORDER

On February 14, 2013, this court dismissed this action for failure to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), and entered judgment. ECF Nos. 16, 17. Plaintiff filed a notice of appeal of the judgment. ECF No. 18. The Court of Appeals for the Ninth Circuit has now referred this matter back to this court for the limited purpose of determining whether in forma pauperis status should continue for the appeal, or whether the appeal is frivolous or taken in bad faith. See ECF No. 20.

The Federal Rules of Appellate Procedure provide as follows:


[A] party who has been permitted to proceed in an action in the district court in forma pauperis . . . may proceed on appeal in forma pauperis without further authorization unless . . . the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed

1 Fed. R. App. P. 24(a). After review of the record herein, and for the reasons given in the court's
2 August 2, 2012, October 10, 2012, and February 14, 2013 orders, the court finds that plaintiff's
3 appeal is not taken in good faith, and that plaintiff's in forma pauperis status should be revoked.

4 The Clerk shall serve a copy of this order on the United States Court of Appeals
5 for the Ninth Circuit (Case No. 13-15593).

6 IT IS SO ORDERED.

7 DATED: April 4, 2013.

8 
9 _____
10 ALLISON CLAIRE
11 UNITED STATES MAGISTRATE JUDGE

12 AC:rb
13 dice1407.24

14
15
16
17
18
19
20
21
22
23
24
25
26