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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

HARRISON L. BURTON,
Plaintiff,
v.
WARDEN RON BARNES et al.,
Defendants.

No. 2:13-cv-0167 DAD P

ORDER

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff's motion to proceed in forma pauperis on appeal and motion for appointment of counsel on appeal.

By way of background, on February 14, 2014, the court denied plaintiff's motion to proceed in forma pauperis and dismissed plaintiff's complaint without leave to amend because success in this civil rights action would necessarily call into question the constitutionality of plaintiff's imprisonment and implicate the duration of his confinement. See Edwards v. Balisok, 520 U.S. 641, 648 (1997) (dismissing a § 1983 action for declaratory relief and money damages because successful challenge to procedures used in disciplinary hearing that resulted in deprivation of good-time credits would necessarily imply the invalidity of the punishment imposed). The court entered judgment on the same day.

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1 Federal Rule of Appellate Procedure 24 provides that “a party to a district-court action
2 who desires to appeal in forma pauperis must file a motion in the district court.” Fed. R. App. P.
3 24(a)(1). Under 28 U.S.C. § 1915(a)(3) “[a]n appeal may not be taken in forma pauperis if the
4 trial court certifies in writing that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3). An
5 appeal is frivolous if it lacks an arguable basis either in law or in fact. See Neitzke v. Williams,
6 490 U.S. 319, 325 (1989); Gardner v. Pogue, 558 F.2d 548, 550-51 (9th Cir. 1977) (indigent
7 appellant is allowed to proceed IFP on appeal only if appeal would not be frivolous).

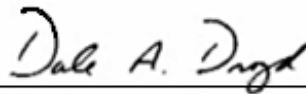
8 For the reasons stated in the court’s February 14, 2014 order dismissing this action, the
9 court finds that plaintiff’s appeal is frivolous. Accordingly, the court certifies that plaintiff’s
10 appeal is not taken in good faith.

11 As to plaintiff’s motion for appointment of counsel, the court will deny that motion
12 without prejudice to its renewal before the United States Court of Appeals for the Ninth Circuit.

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. Plaintiff’s motion to proceed in forma pauperis on appeal (Doc. No. 14) is denied;
- 15 2. Plaintiff’s motion for appointment of counsel on appeal (Doc. No. 13) is denied
16 without prejudice to its renewal before the United States Court of Appeals for the Ninth Circuit;
17 and
- 18 3. The Clerk of the Court is directed to serve a copy of this order on plaintiff and on the
19 United States Court of Appeals for the Ninth Circuit.

20 Dated: April 21, 2014

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22 _____
DALE A. DROZD
23 UNITED STATES MAGISTRATE JUDGE

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