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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTWONE DORNELL GOOLSBY, Sr.,
Plaintiff,
v.
JENKINS,
Defendant.

No. 2:15-cv-1919 MCE DB P

ORDER

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. This matter was dismissed on September 13, 2016, for failure to exhaust administrative remedies following the undersigned’s adoption in full of the magistrate judge’s recommendation to grant defendant’s motion to dismiss. (ECF Nos. 41, 49.) Plaintiff has since appealed the dismissal of this action. (ECF No. 51.) Following receipt of the notice of appeal, the Ninth Circuit referred this matter to the district court for the limited purpose of determining whether in forma pauperis status should continue for the appeal. (ECF No. 53.)

“An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3). The test for allowing an appeal in forma pauperis is easily met; the good faith requirement is satisfied if the appellant seeks review of any issue that is not frivolous. Gardner v. Pogue, 558 F.2d 548, 550-51 (9th Cir. 1977) (citing

1 Coppedge v. United States, 369 U.S. 438, 445 (1962)) (quotation marks omitted); see also Hooker
2 v. American Airlines, 302 F.3d 1091, 1092 (9th Cir. 2002) (if at least one issue or claim is non-
3 frivolous, the appeal must proceed in forma pauperis as a whole). An action is frivolous “where it
4 lacks an arguable basis either in law or in fact.” Neitzke v. Williams, 490 U.S. 319, 325 (1989). In
5 other words, the term “frivolous”, as used in § 1915 and when applied to a complaint, “embraces
6 not only the inarguable legal conclusion, but also the fanciful factual allegation.” Id.


7 Plaintiff’s appeal lacks any arguable basis in law or fact. Plaintiff has conceded that he did
8 not exhaust administrative remedies, and the magistrate judge properly determined that plaintiff
9 failed to establish any applicable exception to the exhaustion requirement. In his notice of appeal,
10 plaintiff does not specify the grounds upon which he is appealing the court’s dismissal of this
11 case. Nonetheless, for the reasons set forth in the magistrate judge’s findings and
12 recommendations, the undersigned believes plaintiff’s appeal to be frivolous.

13 Based on the foregoing, IT IS HEREBY ORDERED that:

- 14 1. The Court denies plaintiff in forma pauperis status on appeal; and
- 15 2. The Clerk of Court shall serve a copy of this order on the Ninth Circuit Court of
16 Appeals.

17 IT IS SO ORDERED.

18 Dated: November 2, 2016

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20 MORRISON C. ENGLAND, JR.
21 UNITED STATES DISTRICT JUDGE
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