

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
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

JAMES FREEMAN TENNISON,

Plaintiff,

v.

PRISON HEALTH SERVICES, et al.,

Defendants.

No. C 11-1718 PJH (PR)

**ORDER CERTIFYING
APPEAL AS NOT TAKEN IN
GOOD FAITH**

This is a section 1983 action brought pro se by a former inmate of the Alameda County Jail. He was granted leave to proceed in forma pauperis ("IFP"). The case was dismissed on initial review because plaintiff conceded in the complaint that his administrative appeal was not decided until April 15, 2011, after this case was filed. See *O'Guinn v. Lovelock Correctional Center*, 502 F.3d 1056, 1061 (9th Cir. 2007) (If ADA or Rehabilitation Act complaint concerns prison conditions, exhaustion required under the PLRA exhaustion provision); *Wyatt v. Terhune*, 315 F.3d 1108, 1119 (9th Cir. 2003) (complaint may be dismissed without prejudice if prisoner concedes nonexhaustion); *McKinney v. Carey*, 311 F.3d 1198, 1199 (9th Cir. 2002) (exhaustion must be completed before a complaint is filed, not afterwards). Plaintiff filed a notice of appeal. The Ninth Circuit Court of Appeals has asked this court to determine if the appeal is taken in good faith.

Rule 24(a)(3) of the Federal Rules of Appellate Procedure provides that a party granted leave to proceed in forma pauperis in district court may continue in that status on appeal unless the district court certifies that the appeal is not taken in good faith. Section 1915(a)(3) of Title 28 of the United States Code similarly provides that an appeal may not

1 be taken IFP if the trial court certifies it is not taken in good faith. "Not taken in good faith"
2 means "frivolous." *Ellis v. United States*, 356 U.S. 674, 674-75 (1958); *Hooker v. American*
3 *Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002) (order) (equating "not taken in good faith" with
4 "frivolous").

5 Because the court's ruling was clearly correct, it is **CERTIFIED** that this appeal is
6 frivolous and therefore not taken in good faith. The clerk shall forthwith notify plaintiff and
7 the court of appeals of this order. See R.App.P. 24(a)(4).

8 **IT IS SO ORDERED.**

9 Dated: September 6, 2011.



PHYLLIS J. HAMILTON
United States District Judge

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28