

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PAUL SAMUEL JOHNSON,	No. C 11-02058 CW (PR)
Plaintiff,	Appeal No. 11-17896
v.	ORDER REVOKING IN FORMA
WARDEN FONG, et al.,	PAUPERIS STATUS ON APPEAL
Defendants.	

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The Court granted Plaintiff, a state prisoner proceeding pro se, leave to proceed in forma pauperis in this civil rights action.

Upon review of the allegations in the complaint, the Court dismissed the complaint without prejudice and without leave to amend for the following reasons: (1) Plaintiff's request for the restoration of credits forfeited as the result of an alleged unlawful disciplinary hearing is moot because he ultimately was not assessed any credit loss; (2) even if not moot, such request is not cognizable in a civil rights action and must be brought in a petition for a writ of habeas corpus; (3) Heck v. Humphrey, 512 U.S. 477 (1994), bars Plaintiff's damages claim based on the alleged unconstitutional deprivation of time credits because such claim necessarily calls into question the lawfulness of the duration of Plaintiff's sentence; (4) Plaintiff's claim for injunctive relief to remedy his alleged unlawful conditions of confinement at San Quentin State Prison (SQSP) is moot, because Plaintiff no longer is incarcerated there; (5) the allegations in the complaint, together with the documents attached thereto, show that Plaintiff did not exhaust administrative remedies with respect to his SQSP injunctive relief claim prior to his filing the instant

1 action.

2 Subsequently, the Court denied Plaintiff's motion for  
3 reconsideration. Plaintiff has filed a notice of appeal. The  
4 United States Court of Appeals for the Ninth Circuit has referred  
5 the case back to this Court for a determination whether Plaintiff's  
6 in forma pauperis status should be revoked.

7 Rule 24(a)(3) of the Federal Rules of Appellate Procedure  
8 provides that a party granted leave to proceed in forma pauperis in  
9 the district court may continue in that status on appeal unless the  
10 district court certifies that the appeal is not taken in good  
11 faith. Section 1915(a)(3) of Title 28 of the United States Code  
12 similarly provides that an appeal may not be taken in forma  
13 pauperis if the trial court certifies it is not taken in good  
14 faith. "Not taken in good faith" means "frivolous." Ellis v.  
15 United States, 356 U.S. 674, 674-75 (1958); Hooker v. American  
16 Airlines, 302 F.3d 1091, 1092 (9th Cir. 2002) (equating "not taken  
17 in good faith" with "frivolous").

18 For the reasons discussed in the Court's Order dismissing  
19 Plaintiff's claims without prejudice the Court concludes that  
20 Plaintiff's appeal is not taken in good faith because it is  
21 frivolous. Accordingly, Plaintiff's in forma pauperis status is  
22 REVOKED.

23  
24 The Clerk of the Court shall serve a copy of this Order on  
25 Plaintiff and on the Court of Appeals.

26 IT IS SO ORDERED.

27 DATED: 1/23/2012

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CLAUDIA WILKEN  
United States District Judge