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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

RONALD LEE ALLEN,

Plaintiff - Appellant,

vs.

BONNY POLLY, Chaplin; et al.

Defendants - Appellees.

2:10-cv-02134-KJD-PAL

ORDER

This matter is before the Court on referral from the United States Court of Appeals for the Ninth Circuit for the limited purpose of determining whether in forma pauperis status should continue for this appeal or whether the appeal is frivolous or taken in bad faith.

This case initially came to the Court on Plaintiff’s Civil Rights Complaint pursuant to 42 U.S.C. § 1983. Plaintiff alleges that he is being denied “a diet consistent with and which allows inmate to maintain religious (sic) scruples”. He names Bonny Polly, the jail chaplin, the sheriff and officers of the Clark County Detention Center. Defendant has since been transferred to High Desert Prison.

Plaintiff’s factual recitation in support of his First and Fourteenth Amendment claims alleges that he is of the Mormon faith and was being offered coffee and tea with his meals, while members

1 of the Jewish and Muslim faiths were being offered fruit juices with their meals. He asserts that he
2 lost weight due to skipping meals where coffee and tea were served with the meals. He
3 acknowledges being offered water as a substitute for coffee and tea. He states that he has spoken
4 with a representative of his faith who has offered to pay for the extra cost of juice if costs are a
5 consideration. It is unclear whether the offer is to pay for juices for all inmates in the prison system
6 or for Plaintiff only.

7 Plaintiff does not allege that he is being forced to drink coffee or tea. He does not allege that
8 his faith requires him to drink juices or that it prohibits him from drinking water. He does not allege
9 that the mere presence of coffee or tea on his tray is deemed by his faith to contaminate the entire
10 meal.

11 Plaintiff is, at most, asserting a preference, not a religious belief or practice. He has
12 alternatives including consumption of water, which is free, or even obtaining juices from the prison
13 commissary. For those reasons, the case was dismissed (#9) for failure to state a claim upon which
14 relief may be granted.

15 Accordingly, Plaintiff should not be permitted to proceed *in forma pauperis* where, as here,
16 the appeal is frivolous and not taken in good faith. 28 U.S.C. §1915(a)(3).

17 Accordingly, Plaintiff's *forma pauperis* status is revoked.

18 DATED this 28th day of April 2011.

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Kent J. Dawson
United States District Judge