

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

MAY 22 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CHRISTOPHER LIPSEY, AKA
Christopher Lipsey, Jr.,

Plaintiff-Appellant,

v.

D. GOREE, Correctional Counselor II at
CSP-Corcoran; M. OLIVEIRA, Appeal
Coordinator at CSP-Corcoran,

Defendants-Appellees,

and

D. DAVEY; et al.,

Defendants.

No. 20-15266

D.C. No.

1:17-cv-00997-DAD-JLT
Eastern District of California,
Fresno

ORDER

Before: NGUYEN and COLLINS, Circuit Judges.

Appellees' motion for judicial notice in support of the motion to revoke appellant's in forma pauperis status (Docket Entry No. 8) is granted.

Appellant's in forma pauperis status is revoked for this appeal because appellant has had three or more prior actions or appeals dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted, and appellant has not alleged imminent danger of serious physical injury. *See* 28 U.S.C. § 1915(g); *see also Lipsey v. Medina*, No. 1:17-cv-01705 (E.D. Cal. Jan. 8,

2020) (dismissed for failure to state a claim); *Lipsey v. California Courts of Appeal*, No. 18-55052 (9th Cir. Sep. 20, 2018) (dismissed appeal as frivolous); *Lipsey v. Court of Appeal of the State of California*, No. 2:17-cv-08985 (C.D. Cal. Dec. 27, 2017) (dismissed as frivolous).

The motion to revoke appellant's in forma pauperis status (Docket Entry No. 7) is denied as moot.

Within 21 days after the date of this order, appellant shall pay \$505.00 to the district court as the docketing and filing fees for this appeal and file proof of payment with this court. Failure to pay the fees will result in the automatic dismissal of the appeal by the Clerk for failure to prosecute, regardless of further filings. *See* 9th Cir. R. 42-1.

No motions for reconsideration, clarification, or modification of the denial of appellant's in forma pauperis status shall be entertained.

If the appeal is dismissed for failure to comply with this order, the court will not entertain any motion to reinstate the appeal that is not accompanied by proof of payment of the docketing and filing fees.

Briefing is suspended pending further order of this court.

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

JUL 15 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CHRISTOPHER LIPSEY, AKA
Christopher Lipsey, Jr.,

Plaintiff-Appellant,

v.

D. GOREE, Correctional Counselor II at
CSP-Corcoran; M. OLIVEIRA, Appeal
Coordinator at CSP-Corcoran,

Defendants-Appellees,

and

D. DAVEY; et al.,

Defendants.

No. 20-15266

D.C. No.

1:17-cv-00997-DAD-JLT
Eastern District of California,
Fresno

ORDER

On May 22, 2020, the court revoked appellant's in forma pauperis status and ordered appellant to pay \$505.00 to the district court as the docketing and filing fees for this appeal and file proof of payment with this court. The May 22, 2020 order further stated that "[n]o motions for reconsideration, clarification, or modification of the denial of appellant's in forma pauperis status shall be entertained."

Accordingly, the court declines to entertain appellant's motion for rehearing at Docket Entry No. 12.

The filing fee for this appeal remains due. Within 21 days after the date of this order, appellant shall pay \$505.00 to the district court as the docketing and filing fees for this appeal and file proof of payment with this court. Failure to pay the fees will result in the automatic dismissal of the appeal by the Clerk for failure to prosecute, regardless of further filings. *See* 9th Cir. R. 42-1.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Lior A. Brinn
Deputy Clerk
Ninth Circuit Rule 27-7

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

AUG 20 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CHRISTOPHER LIPSEY, AKA
Christopher Lipsey, Jr.,

Plaintiff - Appellant,

v.

D. GOREE, Correctional Counselor II
at CSP-Corcoran and M. OLIVEIRA,
Appeal Coordinator at CSP-Corcoran,

Defendants - Appellees,

and

D. DAVEY; et al.,

Defendants.

No. 20-15266

D.C. No. 1:17-cv-00997-DAD-JLT
U.S. District Court for Eastern
California, Fresno

ORDER

A review of the docket demonstrates that appellant has failed to respond to the July 15, 2020 order of this court.

Pursuant to Ninth Circuit Rule 42-1, this appeal is dismissed for failure to prosecute.

This order served on the district court shall, 21 days after the date of the order, act as the mandate of this court.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Tina S. Price
Deputy Clerk
Ninth Circuit Rule 27-7

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER LIPSEY, Jr.,

Plaintiff,

v.

D. GOREE, et al.,

Defendants.

Case No.: 1:17-cv-00997-DAD-JLT (PC)

ORDER ON PLAINTIFF'S NOTICE
REGARDING SETTLEMENT AND
CLOSING CASE IN LIGHT OF
STIPULATION FOR DISMISSAL

(Docs. 46, 47)

The Court held a settlement conference on February 21, 2019 at which the parties resolved this action. (Doc. 44.) Subsequently, Plaintiff filed a document titled "Good Faith Settlement Requested Terms Made Then Breached." (Doc. 46.) In this document, Plaintiff states that after he received the property promised in the settlement, two officers took all but \$30-40 of it from him. In their response, Defendants produced the receipt Plaintiff signed in which he acknowledged receipt of the items promised in settlement, as well as declarations from the officers involved indicating they did not allow Plaintiff to have the items in question until after they confirmed that they were part of a settlement which entitled Plaintiff to have them. (Doc. 49.) This resulted in a delay of only minutes.

In as much as Plaintiff received the items he was promised in the settlement his motion to enforce the settlement agreement fails because no violation of the terms occurred. The settlement terms were met. There was no breach. Even if those items were taken from Plaintiff afterward

by rogue officers, the settlement agreement was breached. Plaintiff provides no legal authority to the contrary and the Court finds none. Likewise, being labeled a “snitch” as Plaintiff contends, does not equate to a breach.¹

The parties filed a stipulation for voluntary dismissal with prejudice of this matter pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii). (Doc. 47.) Rule 41(a)(1)(A), in relevant part, reads:

The plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; (ii) a stipulated dismissal signed by all parties who have appeared.

Once the stipulation between the parties who have appeared is properly filed or made in open court, no order of the court is necessary to effectuate dismissal. Fed. R. Civ. Pro. 41(a)(1)(ii); *Eitel v. McCool*, 782 F.2d 1470, 1473 n. 4 (9th Cir. 1986). “Caselaw concerning stipulated dismissals under Rule 41(a)(1)(ii) is clear that the entry of such a stipulation of dismissal is effective automatically and does not require judicial approval.” *In re Wolf*, 842 F.2d 464, 466 (D.C. Cir. 1989); *Gardiner v. A.H. Robins Co.*, 747 F.2d 1180, 1189 (8th Cir. 1984); *see also Gambale v. Deutsche Bank AG*, 377 F.3d 133, 139 (2d Cir. 2004); *Commercial Space Mgmt. Co. v. Boeing Co.*, 193 F.3d 1074, 1077 (9th Cir. 1999) *cf. Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th Cir. 1997) (addressing Rule 41(a)(1) dismissals).

This case terminated when the parties filed a stipulation for dismissal with prejudice under Rule 41(a)(1)(A)(ii) that was properly signed by all parties who have appeared in this action. *See* Fed. R. Civ. Pro. 41(a)(1)(A)(ii); *In re Wolf*, 842 F.2d at 466; *Gardiner*, 747 F.2d at 1189; *see also Gambale*, 377 F.3d at 139; *Commercial Space Mgmt*, 193 F.3d at 1077; *cf. Wilson*, 111 F.3d at 692.

Therefore, the Court **ORDERS** that to the extent Plaintiff’s notice of breach may be construed as a motion to enforce the settlement, (Doc. 46), it is **DENIED** and the Clerk of the Court is directed to close this case in light of the properly executed Stipulation Of Dismissal With

¹ If Plaintiff feels a violation of his constitutional rights has occurred, he is not prohibited from seeking redress via separate, new action which will be subject to the requirements for civil rights actions, including exhaustion of administrative remedies and screening under 28 U.S.C. § 1915A(a).

1 Prejudice under Federal Rule of Civil Procedure 41(a)(1)(A)(ii) that was filed on March 5, 2019,
2 (Doc. 47).

3
4 IT IS SO ORDERED.

5 Dated: March 20, 2019

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE