

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 11 2020

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

ANDREW DAVID BRUINS II,

Plaintiff-Appellant,

v.

M. WHITMAN, Associate Warden; et al.,

Defendants-Appellees.

No. 20-55060

D.C. No. 3:19-cv-01278-BAS-NLS
Southern District of California,
San Diego

ORDER

Before: TASHIMA, SILVERMAN, and OWENS, Circuit Judges.

The district court certified that this appeal is not taken in good faith. *See* 28 U.S.C. § 1915(a). On January 22, 2020, the court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record, the response to the court's January 22, 2020 order, and the opening brief received on March 5, 2020, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 7) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

All other pending motions are denied as moot.

DISMISSED.

APPENDIX A

The Prisoner must allege facts that, if ²True, would demonstrate that the disparate treatment lacks justification under the "Requisite level of scrutiny"

Veney v Wyche 293 F3d 726, 731 (4th Cir. 2002)

Henry v Van Cleave 469 F.2d 687 (8th Cir 1972)
must have complaint Discrimination - in order for it to be

in requisite (Thing needed) Disparate, without comparison or relation; essentially different



United States District Court
SOUTHERN DISTRICT OF CALIFORNIA

Andrew David Bruins, II

Civil Action No. 19cv1278-BAS-NLS

Plaintiff,

v.

M. Whitman, Associate Warden; A.
Acevedo, Facility Captain; J Jimenez,
Institution ADA Coordinator

JUDGMENT IN A CIVIL CASE

Defendant.

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED:

that the Court grants Plaintiff's Motion to Amend/Correct Complaint and Plaintiff's Motion to Appoint Counsel. Court dismisses the Third Amended Complaint for failing to state a claim upon which relief may be granted pursuant to 28 USC 1915(e)(2)(B) and 1915A(b) and for failing to comply with FRCP 8. Court denies leave to amend as futile. Court certifies that In Forma Pauperis appeal of this dismissal would not be taken in good faith pursuant to 28 U.S.C. § 1915(a)(3). The case is closed.

Date: 12/12/19

CLERK OF COURT

JOHN MORRILL, Clerk of Court

By: s/ J. Haslam

J. Haslam, Deputy

APPENDIX B

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7 **UNITED STATES DISTRICT COURT**
8 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

9
10 ANDREW DAVID BRUINS, II,
11 Plaintiff,
12 v.
13 M. WHITMAN, *et al.*,
14 Defendants.

Case No. 19-cv-01278-BAS-NLS

**ORDER TERMINATING AS MOOT
PENDING MOTIONS**

[ECF Nos. 17, 19, 21, 23]

15 On December 12, 2019, the Court dismissed Plaintiff's Third Amended Complaint
16 without leave to amend, and a Clerk's Judgment was entered closing the case. (ECF Nos.
17 14, 15.) Plaintiff thereafter filed the following documents after the case was closed,
18 docketed as follows: Motion to Appoint Counsel (ECF No. 17), two Motions for Leave to
19 File an Amended Complaint (ECF Nos. 19, 21), and a Motion for Extension of Time (ECF
20 No. 23). Plaintiff also filed an appeal with the Ninth Circuit on January 15, 2020. (ECF
21 No. 22.)

22 Because this Plaintiff was not granted leave to amend and a judgment has been
23 entered closing the case, the Court **TERMINATES AS MOOT** the aforementioned
24 motions pending before this Court. This case remains closed.

25 **IT IS SO ORDERED.**

26
27 **DATED: May 21, 2020**

28

Hon. Cynthia Bashant
United States District Judge

UNITED STATES COURT OF APPEALS

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FOR THE NINTH CIRCUIT

DEC 14 2020

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

ANDREW DAVID BRUINS II,

Plaintiff-Appellant,

v.

M. WHITMAN, Associate Warden; et al.,

Defendants-Appellees.

No. 20-55060

D.C. No. 3:19-cv-01278-BAS-NLS
Southern District of California,
San Diego

ORDER

Before: TASHIMA, SILVERMAN, and OWENS, Circuit Judges.

Bruins's motion for reconsideration (Docket Entry No. 13) is rejected as untimely.

Bruins's motion to proceed in forma pauperis (Docket Entry No. 14) and motion for appointment of counsel (Docket Entry No. 15) are denied as moot.

No further filings will be entertained in this closed case.

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APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

OCT 05 2020

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

ANDREW DAVID BRUINS II,

Plaintiff - Appellant,

v.

M. WHITMAN, Associate Warden; et
al.,

Defendants - Appellees.

No. 20-55060

D.C. No. 3:19-cv-01278-BAS-NLS
U.S. District Court for Southern
California, San Diego

MANDATE

The judgment of this Court, entered September 11, 2020, takes effect this
date.

This constitutes the formal mandate of this Court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Jessica Flores
Deputy Clerk
Ninth Circuit Rule 27-7

APPENDIX E