

"APPENDIX A."

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

OCT 19 2022

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

JAMISI JERMAINE CALLOWAY,

Plaintiff-Appellant,

v.

M. MARTEL, Warden; et al.,

Defendants-Appellees.

No. 22-15583

D.C. No. 2:20-cv-01384-TLN-CKD
Eastern District of California,
Sacramento

ORDER

Before: SILVERMAN, IKUTA, and MILLER, Circuit Judges.

The district court certified that this appeal is not taken in good faith and has denied appellant leave to proceed on appeal in forma pauperis. On May 6, 2022, 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 and the response to this court's May 6, 2022 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 6) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

All other pending motions are denied as moot.

No further filings will be entertained in this closed case.

DISMISSED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

NOV 10 2022

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

JAMISI JERMAINE CALLOWAY,

Plaintiff - Appellant,

v.

M. MARTEL, Warden, Warden; et al.,

Defendants - Appellees.

No. 22-15583

D.C. No. 2:20-cv-01384-TLN-CKD

U.S. District Court for Eastern
California, Sacramento

MANDATE

The judgment of this Court, entered October 19, 2022, 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: Nixon Antonio Callejas Morales
Deputy Clerk
Ninth Circuit Rule 27-7

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

MAY 6 2022

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

JAMISI JERMAINE CALLOWAY,

Plaintiff-Appellant,

v.

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No. 22-15583

D.C. No.

2:20-cv-01384-TLN-CKD

Eastern District of California,
Sacramento

ORDER

A review of the district court's docket reflects that the district court has certified that this appeal is not taken in good faith and has revoked appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). This court may dismiss a case at any time, if the court determines the case is frivolous. *See* 28 U.S.C. § 1915(e)(2).

Within 35 days after the date of this order, appellant must:

- (1) file a motion to dismiss this appeal, *see* Fed. R. App. P. 42(b), or
- (2) file a statement explaining why the appeal is not frivolous and should go forward.

If appellant files a statement that the appeal should go forward, appellant also must:

- (1) file in this court a motion to proceed in forma pauperis, OR
- (2) pay to the district court \$505.00 for the filing and docketing fees for this appeal AND file in this court proof that the \$505.00 was paid.

If appellant does not respond to this order, the Clerk will dismiss this appeal for failure to prosecute, without further notice. *See* 9th Cir. R. 42-1. If appellant files a motion to dismiss the appeal, the Clerk will dismiss this appeal, pursuant to Federal Rule of Appellate Procedure 42(b). If appellant submits any response to this order other than a motion to dismiss the appeal, the court may dismiss this appeal as frivolous, without further notice. If the court dismisses the appeal as frivolous, this appeal may be counted as a strike under 28 U.S.C. § 1915(g).

The briefing schedule for this appeal is stayed. All pending motions will be addressed after appellant complies with this order.

The Clerk shall serve on appellant: (1) a form motion to voluntarily dismiss the appeal, (2) a form statement that the appeal should go forward, and (3) a Form 4 financial affidavit. Appellant may use the enclosed forms for any motion to dismiss the appeal, statement that the appeal should go forward, and/or motion to proceed in forma pauperis.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Joseph Williams
Deputy Clerk
Ninth Circuit Rule 27-7

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7 UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA
9

10 JAMISI JERMAINE CALLOWAY,

11 Plaintiff,

12 v.

13 M. MARTEL, et al.,

14 Defendants.
15

No. 2:20-cv-01384-TLN-CKD

ORDER

16 Plaintiff, a state prisoner proceeding in forma pauperis, sought relief pursuant to 42 U.S.C.
17 § 1983. Judgment was entered in this action on April 7, 2022. (ECF No. 25.) On April 17, 2022,
18 Plaintiff filed a notice of appeal.¹ (ECF No. 27.) The Ninth Circuit Court of Appeal referred this
19 matter to the District Court for the limited purpose of determining whether Plaintiff's in forma
20 pauperis status should continue on appeal. (See ECF No. 30.)

21 The Federal Rules of Appellate Procedure provide as follows:

22 [A] party who has been permitted to proceed in an action in the
23 district court in forma pauperis . . . may proceed on appeal in forma
24 pauperis without further authorization unless . . . the district court
shall certify that the appeal is not taken in good faith or shall find that
the party is otherwise not entitled so to proceed

25 Fed. R. App. P. 24(a). After review of the record herein, the Court finds that Plaintiff's appeal is
26 not taken in good faith. Accordingly, Plaintiff's in forma pauperis is revoked for purposes of

27
28 ¹ All filing dates are calculated using the prison mailbox rule. See *Houston v. Lack*, 487
U.S. 266 (1988).

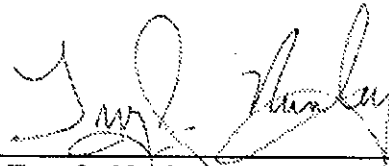
1 appeal.

2 Accordingly, IT IS HEREBY ORDERED that:

3 1. Plaintiff's in forma pauperis status is revoked. *See* Fed. R. App. P. 24(a).

4 2. A copy of this Order shall be served on the Ninth Circuit Court of Appeals.

5 DATED: May 5, 2022

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9 Troy L. Nunley
United States District Judge

MIME-Version:1.0 From:caed_cmecf_helpdesk@caed.uscourts.gov To:CourtMail@localhost.localdomain
Message-Id: Subject:Activity in Case 2:20-cv-01384-TLN-CKD (PC) Calloway v. Martel et al Order.
Content-Type: text/html

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U.S. District Court

Eastern District of California – Live System

Notice of Electronic Filing

The following transaction was entered on 5/6/2022 at 9:39 AM PDT and filed on 5/6/2022

Case Name: (PC) Calloway v. Martel et al

Case Number: 2:20-cv-01384-TLN-CKD

Filer:

WARNING: CASE CLOSED on 04/07/2022

Document Number: 32

Docket Text:

ORDER signed by District Judge Troy L. Nunley on 05/05/2022 ORDERING that Plaintiff's in Forma Pauperis Status is REVOKED. A copy of this Order shall be served on the Ninth Circuit Court of Appeals. (Rodriguez, E)

2:20-cv-01384-TLN-CKD Notice has been electronically mailed to:

2:20-cv-01384-TLN-CKD Electronically filed documents must be served conventionally by the filer to:

Jamisi Jermaine Calloway
P-97743
California Health Care Facility (CHCF)
P.O. Box 213040
Stockton, CA 95213

The following document(s) are associated with this transaction:

"APPENDIX E."

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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 JAMISI JERMAINE CALLOWAY,

12 Plaintiff,

13 v.

14 M. MARTEL, et al.,

15 Defendants.
16

No. 2:20-cv-01384-CKD P

ORDER AND

FINDINGS AND RECOMMENDATIONS

17 Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights
18 action filed pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local
19 Rule 302 pursuant to 28 U.S.C. § 636(b)(1). Currently pending before the court are plaintiff's
20 third amended complaint and his motion for a preliminary injunction and temporary restraining
21 order. ECF Nos. 17, 20.

22 By order dated November 22, 2021, the court dismissed plaintiff's second amended
23 complaint for improperly joining unrelated claims against multiple defendants into a single
24 action. ECF No. 15 at 3. Plaintiff was advised that the court could not determine "from the
25 numerous allegations whether this is a case of retaliation based on plaintiff's housing
26 classification, deliberate indifference to his serious medical and mental health needs, the use of
27 excessive force during cell extractions, or the conditions of his confinement while housed at
28 CHCF between August 25, 2016 and March 14, 2019." ECF No. 15 at 3. The court granted

1 plaintiff one final opportunity to amend his complaint despite his failure to follow prior court
2 orders. Id. The court warned plaintiff that if he continued to join unrelated parties and claims
3 despite multiple warnings, the court would recommend dismissing this action for failing to follow
4 a court order. Id.

5 **I. Screening Requirement**

6 As plaintiff was previously advised, the court is required to screen complaints brought by
7 prisoners seeking relief against a governmental entity or officer or employee of a governmental
8 entity. 28 U.S.C. § 1915A(a). The court will independently dismiss a complaint or portion
9 thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state
10 a claim upon which relief may be granted, or that seek monetary relief from a defendant who is
11 immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

12 **II. Allegations in the Third Amended Complaint**

13 In complete disregard for this court’s prior orders, plaintiff filed a third amended
14 complaint against 41 named CDCR defendants, an additional 100 Doe defendants, and the San
15 Joaquin General Hospital. ECF No. 20. In each of his causes of action, plaintiff asserts, in a
16 conclusory fashion, that these numerous defendants personally tried to kill him by retaliating
17 against him, forcibly removing him from his cell to take him for needed medical treatment, and
18 denying him humane conditions of confinement. ECF No. 20. The factual allegations date from
19 August 2016 to October 2017. Id.

20 Once again, the court cannot discern any common transaction or occurrence that connects
21 all of the defendants in the third amended complaint. See Fed. R. Civ. P. 20(a)(2)(A). Nor are
22 there any common questions of law or fact connecting the various causes of action that range
23 from First Amendment retaliation claims to Eighth Amendment conditions of confinement and
24 deliberate indifference claims. Fed. R. Civ. P. 20(a)(2)(B). Plaintiff was informed that filing a
25 third amended complaint with unrelated claims and defendants would result in a recommendation
26 that this action be dismissed pursuant to Fed. R. Civ. P. 41(b). Plaintiff has demonstrated his
27 unwillingness to comply with multiple court orders despite being given several opportunities to
28 fix the deficiencies in his complaint. See ECF No. 16. Therefore, the undersigned recommends

1 dismissing plaintiff's third amended complaint without further leave to amend. See also
2 Klamath-Lake Pharm. Ass'n v. Klamath Med. Serv. Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983)
3 (holding that while leave to amend shall be freely given, the court does not have to allow futile
4 amendments).

5 **III. Plain Language Summary for Pro Se Party**

6 The following information is meant to explain this order in plain English and is not
7 intended as legal advice.

8 The court has reviewed the allegations in your third amended complaint and determined
9 that you joined unrelated claims against multiple defendants despite multiple court warnings not
10 to do so. It is recommended that your complaint be dismissed without further leave to amend due
11 to your failure to follow court orders.

12 If you disagree with this recommendation, you have 14 days to explain why it is not the
13 correct outcome in your case. Label your explanation "Objections to Magistrate Judge's Findings
14 and Recommendations." The district judge assigned your case will then review the case and
15 make the final decision in this matter.

16 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court randomly assign this
17 matter to a district court judge.

18 IT IS RECOMMENDED that:

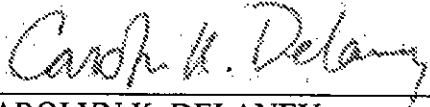
19 1. Plaintiff's third amended complaint be dismissed pursuant to Federal Rule of Civil
20 Procedure 41(b) for failing to follow a court order.

21 2. Plaintiff's motion for a preliminary injunction and temporary restraining order (ECF
22 No. 17) be denied as moot in light of the dismissal of plaintiff's amended complaint.

23 These findings and recommendations are submitted to the United States District Judge
24 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
25 after being served with these findings and recommendations, any party may file written
26 objections with the court and serve a copy on all parties. Such a document should be captioned
27 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
28 objections shall be filed and served within fourteen days after service of the objections. The

1 parties are advised that failure to file objections within the specified time may waive the right to
2 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 Dated: March 23, 2022

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5 CAROLYN K. DELANEY
6 UNITED STATES MAGISTRATE JUDGE
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MIME-Version:1.0 From:caed_cmecf_helpdesk@caed.uscourts.gov To:CourtMail@localhost.localdomain
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U.S. District Court

Eastern District of California – Live System

Notice of Electronic Filing

The following transaction was entered on 3/23/2022 at 10:16 AM PDT and filed on 3/23/2022

Case Name: (PC) Calloway v. Martel et al

Case Number: 2:20-cv-01384-TLN-CKD

Filer:

Document Number: 22

Docket Text:

ORDER and FINDINGS and RECOMMENDATIONS signed by Magistrate Judge Carolyn K. Delaney on 03/23/22 ORDERING the Clerk of the Court randomly assign a U.S. District Judge to this case. Also, RECOMMENDING that plaintiff's third amended complaint be dismissed pursuant to FRCP 41(b) for failing to follow a court order. Plaintiff's motion for a preliminary injunction and temporary restraining order [17] be denied as moot in light of the dismissal of plaintiff's amended complaint. Motion [17] assigned and referred to Judge Troy L. Nunley. Objections due within 14 days.(Plummer, M)

2:20-cv-01384-TLN-CKD Notice has been electronically mailed to:

2:20-cv-01384-TLN-CKD Electronically filed documents must be served conventionally by the filer to:

Jamisi Jermaine Calloway
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