

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DARYL LAMAR BERRY,

Plaintiff,

v.

CATHERINE SHAFFER, et al.,

Defendants.

CASE NO. C18-1588JLR

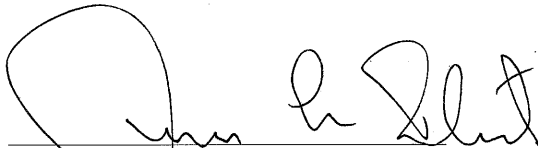
ORDER ON LIMITED
REFERRAL

This matter comes before the court on a limited referral from the Ninth Circuit Court of Appeals. The Ninth Circuit asks the court to determine whether Plaintiff Daryl Lamar Berry's *in forma pauperis* ("IFP") status should continue on appeal or whether, instead, it should be revoked because his appeal is frivolous or taken in bad faith. Under 28 U.S.C. § 1915(a)(3), an appeal may not be taken IFP if the trial court certifies in writing that it is not taken in good faith or is frivolous. *See* 28 U.S.C. § 1915(a)(3); *Hooker v. Am. Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002).

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1 The court hereby certifies that this appeal is frivolous. An appeal is frivolous if it
2 lacks an arguable basis in either law or fact. *See Martin v. Sias*, 88 F.3d 774, 775 (9th
3 Cir. 1996). Mr. Berry's appeal lacks an arguable basis in law. Mr. Berry is appealing the
4 court's dismissal of his complaint, which the court based on numerous grounds: (1) his
5 complaint is untimely and barred by the statute of limitations; (2) his complaint is barred
6 by *Heck v. Humphrey*, 512 U.S. 477, 487 (1994), in that it seeks money damages for a
7 criminal conviction and sentence, which would necessarily invalidate a conviction or
8 sentence that has not yet been invalidated; (3) his complaint names defendants who are
9 immune from suit; and (4) his complaint names defendants who did not participate at all
10 in the underlying criminal conviction and sentence and who are thus not liable. (Report
11 and Recommendation (Dkt. # 6) at 2-6; Order (Dkt. # 7) at 1 (adopting Report and
12 Recommendation).) In the district court, Mr. Berry did not provide the court with a valid
13 reason why any of these grounds for dismissal should not apply, and the court can discern
14 no colorable argument for why they would not apply or why Mr. Berry will prevail on his
15 appeal. The court concludes that Mr. Berry's appeal lacks an arguable basis in law and is
16 therefore frivolous. Accordingly, IFP status should be revoked on appeal.

17 Dated this 4th day of January, 2019.

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19 JAMES L. ROBART
20 United States District Judge
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