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DEC 15 1998

ATTORNEY GENERAL'S OFFICE  
CRIMINAL JUSTICE DIV - OLYMPIA

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DEC 14 1998

JAMES R. LARSEN, Clerk

Deputy

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

FREDERICK BUBECK,  
Plaintiff,  
vs.  
TANA WOOD,  
Defendant.

NO. CS-96-276-FVS

ORDER

THE NINTH CIRCUIT COURT OF APPEALS recently asked this Court to indicate whether Mr. Bubeck is appealing in good faith. 28 U.S.C. § 1915(a)(3) (1998). Bubeck is representing himself; the defendant is represented by Assistant (Washington) Attorneys General Douglas W. Carr and Mary E. Fairhurst. For the reasons set forth below, the Court concludes that Bubeck's claims are frivolous.

**BACKGROUND**

Frederick Bubeck filed a complaint alleging that Ms. Wood violated several federal constitutional guarantees by taking money out of his account at the Washington State Penitentiary pursuant to RCW 72.09.111, RCW 72.09.480(2), and RCW 72.09.095. The constitutional guarantees Bubeck relied upon include the

1 Double Jeopardy Clause, the Ex Post Facto Clause, the Excessive  
2 Fines Clause, the prohibition against Bills of Attainder, and  
3 the Due Process Clause. On September 30, 1998, the Court ruled  
4 that Bubeck's constitutional claims are without merit. In  
5 response, Bubeck filed (among other things) a motion for  
6 reconsideration and a "Motion for Extension of Time." The  
7 Court denied the former on November 5, 1998, and treated the  
8 latter as a notice of appeal. That led to the referral from  
9 the Ninth Circuit.

#### 10 RULING

11 In-forma-pauperis appeals are governed by 28 U.S.C. §  
12 1915(a)(3), which provides, "An appeal may not be taken in  
13 forma pauperis if the trial court certifies in writing that it  
14 is not taken in good faith." For purposes of § 1915(a), an  
15 appeal is taken in "good faith" as long as it is not frivolous.  
16 See Coppedge v. United States, 369 U.S. 438, 444-45, 82 S.Ct.  
17 917, \_\_\_, 8 L.Ed.2d 21 (1962).<sup>1</sup> An appeal is frivolous only if  
18 "it lacks an arguable basis either in law or in fact." Neitzke  
19 v. Williams, 490 U.S. 319, 325, 109 S.Ct. 1827, 1831-32, 104  
20 L.Ed.2d 338 (1989).

21 Mr. Bubeck's constitutional claims are analyzed in detail  
22 in the Court's order of September 30, 1998. As that analysis  
23

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24 <sup>1</sup>There is no indication the relevant standard has been  
25 modified by the Prison Litigation Reform Act of 1996, Pub.L.  
No. 104-134, 110 Stat. 1321.

1 reveals, his claims lack even an arguable basis in law. Thus,  
2 they are frivolous.

3  
4 **IT IS HEREBY ORDERED:**

5 Mr. Bubeck's appeal is not taken in good faith.

6  
7 **IT IS SO ORDERED.** The District Court Executive is hereby  
8 directed to enter this Order, furnish copies to the plaintiff  
9 and to counsel for the defendant, and close the file.

10 DATED this 14<sup>th</sup> day of December 1998.

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13 FRED VAN SICKLE  
14 United States District Judge  
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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON (SPOKANE)

RECEIVED

DEC 16 1998

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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DEC 14 1998

JAMES R. LARSEN, Clerk  
Deputy

USCA#: 98-36121  
DC#: CV-96-00276-FLV

FREDERICK W. BUBECK

Plaintiff - Appellant

v.

TANA WOOD

Defendant - Appellee

ORDER

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This appeal has been taken in good faith [ ]

This appeal is not taken in good faith [X]

Explanation: no arguable basis in  
law.

Fred Van Bickle

Judge

United States District Court

Date: December 14, 1998