

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FEB 28 2013

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

JASON COX,

Plaintiff - Appellant,

v.

ELDON VAIL, Secretary, WA DOC; et
al.,

Defendants - Appellees.

No. 12-36067

D.C. No. 3:12-cv-05421-BHS
Western District of Washington,
Tacoma

ORDER

Before: WARDLAW and MURGUIA, Circuit Judges.

Appellant's motion to proceed in forma pauperis is denied because we find that the appeal is frivolous. If appellant wishes to pursue this appeal despite the court's finding that it is frivolous, then within 21 days after the date of this order, appellant shall pay \$455.00 to the district court as the docketing and filing fees for this appeal and file proof of payment with this court. Otherwise, the appeal will be dismissed 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 filed or entertained.

Because the court has found that this appeal is frivolous, the appeal may be summarily affirmed even if appellant pays the fees. If, however, appellant pays the fees and files proof of such payment in this court, appellant shall simultaneously show cause why the judgment challenged in this appeal should not be summarily affirmed. *See* 9th Cir. R. 3-6. If appellant elects to show cause, a response may be filed within 10 days after service of appellant's filing. If appellant pays the fees but fails to file a response to this order, the Clerk shall dismiss this appeal for failure to prosecute. *See* 9th Cir. R. 42-1.

If the appeal is dismissed for failure to comply with this order, the Clerk shall not file or entertain any motion to reinstate the appeal that is not accompanied by proof of payment of the docketing and filing fees and a response to the order to show cause.

Briefing is suspended pending further order of this court.

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U.S. District Court for Western
Washington, Tacoma

ORDER

A review of the file in this case reveals that the appellant has failed to perfect the appeal as prescribed by the Federal Rules of Appellate Procedure.

Pursuant to Ninth Circuit Rule 42-1, this appeal is dismissed for failure to pay the docketing/filing fees in this case.

This order served on the district court shall constitute the mandate of this court.

FOR THE COURT:
Molly C. Dwyer
Clerk of Court

Dru E. Van Dam
Deputy Clerk