

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

APR 09 2014

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

STEVEN DARBY MCDONALD,

Plaintiff - Appellant,

v.

MD JOHN DAVID KENNEY, Medical
Director, Washington State Dept. of
Corrections, in his individual and official
capacity, and MD G. STEVEN
HAMMOND, Medical Director,
Washington State Dept. of Corrections, in
his individual and official capacity,

Defendants - Appellees.

No. 14-35068

D.C. No. 3:13-cv-05647-BHS
Western District of Washington,
Tacoma

ORDER

Before: GOODWIN and CANBY, Circuit Judges.

The district court has certified that this appeal is not taken in good faith and has revoked appellant's in forma pauperis status. We deny appellant's motion to proceed in forma pauperis because we also find the appeal is frivolous. *See* 28 U.S.C. § 1915(a).

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 \$505.00 to the district court as the docketing and filing fees for this appeal and file

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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 entertained.

Because the court has found that this appeal is frivolous, the district court order may be summarily affirmed even if appellant pays the fees. If appellant pays the fees and files proof of such payment in this court, appellant therefore shall simultaneously show cause why the order challenged in this appeal should not be summarily affirmed. *See* 9th Cir. R. 3-6. If appellant pays the fees but fails to file a response to this order, the court will determine whether to summarily affirm the district court order based on the opening brief, filed on February 14, 2014.

If the appeal is dismissed for failure to comply with this order, the court will not entertain any motion to reinstate the appeal that is not accompanied by proof of payment of the docketing and filing fees.

Briefing is suspended pending further order of this court.

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MAY 16 2014

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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 respond to the order of this court dated April 9, 2014.

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