

FILED

UNITED STATES COURT OF APPEALS

APR 01 2013

FOR THE NINTH CIRCUIT

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

JEFFREY R. MCKEE,

Plaintiff - Appellant,

v.

ROB MCKENNA, Washington State  
Attorney General; et al.,

Defendants - Appellees.

No. 12-35912

D.C. No. 3:12-cv-05125-RJB  
U.S. District Court for Western  
Washington, Tacoma

ORDER

Before: GRABER and BEA, Circuit Judges.

Appellees' motion to dismiss this appeal for failure to pay the court's filing fee is denied.

On December 4, 2012, the district court certified that this appeal is not taken in good faith and revoked appellant's in forma pauperis status. We vacate our December 6, 2012 order as issued in error, and because we also find the appeal is frivolous, also deny appellant's motion to proceed in forma pauperis. *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

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\$455.00, less the amount of fees appellant has already paid pursuant to the court's December 6, 2012 order, 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 pays the fees but fails to file a response to this order, the court will determine whether to summarily affirm the judgment in this appeal based on the opening brief submitted on February 19, 2013.

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.

All other pending motions are held in abeyance pending compliance with this order.

The Clerk shall serve this order on the Attorney General for the State of Washington, Criminal Justice Division, P.O. Box 40100, Olympia, WA 98504, who shall provide notification of this order to the appropriate agency or prison authority responsible for calculating, collecting, and forwarding payment of filing fees to the district court for this appeal.

The Clerk shall also serve this order on the clerk and the financial unit of the district court.

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

APR 29 2013

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

JEFFREY R. MCKEE,

Plaintiff - Appellant,

v.

ROB MCKENNA, Washington State  
Attorney General; et al.,

Defendants - Appellees.

No. 12-35912

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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