

DEC 14 2009

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>BARRY SIMON JAMESON,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p style="text-align: center;">v.</p> <p>SCOTT P. RAWERS; et al.,</p> <p style="text-align: center;">Defendants - Appellees.</p>
--

No. 07-17015

D.C. No. CV-03-05593-
LJO/WMW

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O’Neill, District Judge, Presiding

Submitted November 17, 2009**

Before: ALARCÓN, TROTT, and TASHIMA, Circuit Judges.

Barry Simon Jameson, a California state prisoner, appeals pro se from the district court’s order denying him leave to proceed in forma pauperis in his 42

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. Accordingly, Jameson’s request for oral argument is denied. *See* Fed. R. App. P. 34(a)(2).

U.S.C. § 1983 action alleging that defendants violated his constitutional rights.

We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990). We reverse and remand.

Under this Court's decision in *Andrews v. King*, 398 F.3d 1113, 1122 (9th Cir. 2005), a dismissed habeas petition does not count as a "strike" under 28 U.S.C. § 1915(g). Because the district court treated as a strike the dismissed habeas petition in *Jameson v. Ratelle*, No. 96-cv-00299-J-RCM (S.D. Cal. Jan. 27, 1997) (order), we reverse the dismissal and remand for further proceedings.

All outstanding motions are denied.

REVERSED and REMANDED.