

JAN 23 2009

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>DARYL DWIGHT GRAY,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>ANTONIO VILLARAIGOZA, Mayor of Los Angeles; et al.,</p> <p>Defendants - Appellees.</p>

No. 07-56035

D.C. No. CV-06-03836-JVS

MEMORANDUM *

Appeal from the United States District Court
for the Central District of California
James V. Selna, District Judge, Presiding

Submitted January 13, 2009**

Before: O'SCANNLAIN, BYBEE, and CALLAHAN, Circuit Judges.

Daryl Dwight Gray, a California state prisoner, appeals pro se from the district court's judgment dismissing pursuant to 28 U.S.C. § 1915A his civil rights

* 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. See Fed. R. App. P. 34(a)(2).

action as barred under *Heck v. Humphrey*, 512 U.S. 477 (1994). We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000), and we affirm.

The district court properly dismissed the action because a judgment in Gray's favor would necessarily imply the invalidity of Gray's conviction, and Gray failed to allege that his conviction has been invalidated. *See Heck*, 512 U.S. at 486-87.

The district court did not abuse its discretion by denying Gray's request for appointment of counsel. *See Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991).

Gray's remaining contentions are unpersuasive.

AFFIRMED.