

MAR 26 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>DENNIS E. ABBOTT,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>OLIVIA CRAVEN; et al.,</p> <p>Defendants - Appellees.</p>

No. 07-35868

D.C. No. CV-05-00318-EJL

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
Edward J. Lodge, District Judge, Presiding

Submitted March 18, 2009**

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Dennis E. Abbott appeals pro se from the district court’s summary judgment dismissing his 42 U.S.C. § 1983 action in which Abbott claimed that members of the Idaho Commission of Pardons and Parole improperly increased the duration of

* 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).

his sentence, violated his due process rights, and violated the Ex Post Facto Clause by requiring him to complete sex-offender treatment as a prerequisite to parole eligibility. We have jurisdiction under 28 U.S.C. § 1291. We review de novo summary judgment and the determination that a complaint fails to state a claim, *Barnett v. Centoni*, 31 F.3d 813, 815 (9th Cir. 1994) (per curiam), and we affirm.

Abbott's challenges to his re-sentencing in 1986 and the denial of parole are barred by *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994) (holding "that, in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus).

Abbott's Ex Post Facto contention fails under *Neal v. Shimoda*, 131 F.3d 818, 827 (9th Cir. 1997) ("[M]andatory treatment programs following an inmate's classification as a sex offender based on conduct which occurred prior to the program's beginning do not violate the Ex Post Facto Clause.").

Abbott's due process contention fails because he must show a state-created liberty interest, see *Board of Pardons v. Allen*, 482 U.S. 369, 374-75 (1987), and

under Idaho law there is no such liberty interest in parole, *Banks v. State*, 920 P.2d 905, 908 (Idaho 1996).

The order to show cause regarding possible mootness is discharged.

AFFIRMED.