

MAY 22 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STEVEN VLASICH,

Plaintiff - Appellant,

v.

S D SUPERIOR CT., San Diego Superior  
Court; CALIFORNIA DEPARTMENT OF  
CORRECTIONS; TERRY BOEHME; W.  
A. DUNCAN; LAURA HILL; SANDI  
MENEFEE; JESUS RODRIGUEZ,

Defendants - Appellees.

No. 07-15667

D.C. No. CV-05-00870-  
OWW/LJO

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Oliver W. Wanger, District Judge, Presiding

Argued and Submitted April 15, 2009  
San Francisco, California

Before: SILER,<sup>\*\*</sup> KLEINFELD, and M. SMITH, Circuit Judges.

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

\*\* The Honorable Eugene E. Siler, Jr., Senior United States Circuit Judge for the Sixth Circuit, sitting by designation.

Steven Vlasich appeals the dismissal of his amended complaint seeking declaratory and injunctive relief under 42 U.S.C. § 1983.<sup>1</sup>

Dismissal of Vlasich's *ex post facto* claim was proper because the post-conviction amendments to California Penal Code § 2085.5 do not impose additional punishment on Vlasich. Quarles v. Kane, 482 F.3d 1154, 1155 (9th Cir. 2007); see also United States v. Gianelli, 543 F.3d 1178, 1183–84 (9th Cir. 2008).

The district court did err in ordering a preemptive “strike.” Should Vlasich bring another civil action or appeal the judgment in another proceeding, the court may then decide whether this dismissal should count as a strike. See 28 U.S.C. § 1915(g); see also O’Neal v. Price, 531 F.3d 1146, 1153 (9th Cir. 2008).

The dismissal of Vlasich's complaint is **AFFIRMED**. The order assessing a strike is **VACATED**.

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<sup>1</sup> As clarified at oral argument, Vlasich does not appeal the dismissal of his claims against Judge Rodriguez or the San Diego Superior Court challenging the restitution order's validity or amount. Accordingly, we do not address these claims.