

AUG 17 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JAMES MICHAEL NEWMAN,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>LARRY BOWLES; et al.,</p> <p>Defendants - Appellees.</p>
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No. 08-56449

D.C. No. 2:07-cv-02950-DSF-PJW

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Submitted August 11, 2009**

Before: KLEINFELD, M. SMITH, and IKUTA, Circuit Judges.

James Michael Newman appeals pro se from the district court's judgment dismissing with prejudice his 42 U.S.C. § 1983 action alleging that he was

* 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).

searched, arrested and ultimately convicted based on an invalid document that subjected him to parole search conditions. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Whitaker v. Garcetti*, 486 F.3d 572, 579 (9th Cir. 2007), and we affirm in part, vacate in part, and remand.

The district court properly dismissed the action pursuant to *Heck v. Humphrey*, 512 U.S. 477 (1994), in light of the state court's finding that the search was not based on a parole search condition, and Newman's failure to show that the state court's finding has been overturned or invalidated. *See id.* at 486-87. However, we vacate the judgment and remand so that the district court may dismiss the action without prejudice. *See Trimble v. City of Santa Rosa*, 49 F.3d 583, 586 (9th Cir. 1995) (per curiam).

Because we affirm the judgment based on *Heck*, we do not reach the district court's alternative bases for dismissal.

The parties shall bear their own costs on appeal.

AFFIRMED in part, VACATED in part, and REMANDED.