

DEC 14 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>DANIEL LEROY TURNER,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>BERNIE GIUSTO, Sheriff of Multnomah County,</p> <p>Defendant - Appellee.</p>

No. 08-35830

D.C. No. 3:08-cv-00740-AC

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Garr M. King, District Judge, Presiding

Submitted November 17, 2009**

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

Daniel Leroy Turner appeals pro se from the district court’s judgment
dismissing his 42 U.S.C. § 1983 action alleging improper delay in his arraignment

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without
oral argument. See Fed. R. App. P. 34(a)(2).

and a violation of his right to a speedy trial. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo, *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (order), and we affirm in part, vacate in part, and remand.

Because a judgment in Turner's favor would necessarily imply the invalidity of his conviction, the district court properly dismissed the action. *See Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994). However, the dismissal under *Heck* should have been without prejudice. *See Trimble v. City of Santa Rosa*, 49 F.3d 583, 585 (9th Cir. 1995).

Accordingly, we remand to the district court for the limited purpose of entering dismissal without prejudice.

Turner's remaining contentions are unpersuasive.

Turner shall bear his own costs on appeal.

AFFIRMED in part, VACATED in part, and REMANDED.