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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ANTHONY BAILEY,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>ROBERT MILLER; et al.,</p> <p>Defendants - Appellees.</p>

No. 09-15139

D.C. No. 2:08-cv-00060-JCM-GWF

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Submitted February 16, 2010**

Before: FERNANDEZ, GOULD, and M. SMITH, Circuit Judges.

Anthony Bailey, a former Nevada state prisoner, appeals pro se from the district court's order denying his motion for relief from judgment in his 42 U.S.C.

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

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

§ 1983 action alleging ineffective assistance of counsel and malicious prosecution. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *De Saracho v. Custom Food Mach., Inc.*, 206 F.3d 874, 880 (9th Cir. 2000). We may affirm on any basis supported by the record. *Dittman v. California*, 191 F.3d 1020, 1027 n.3 (9th Cir. 1999). We affirm.

Bailey submitted evidence that his sentence was reduced as a result of his criminal appeal and habeas proceedings. Accordingly, his claims are not barred under *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). However, because Bailey failed to provide facts suggesting that absolute prosecutorial immunity did not apply, *see Imbler v. Pachtman*, 424 U.S. 409, 430-31 (1976), that his defense counsel acted under color of state law for the purposes of section 1983 liability, *see Miranda v. Clark County*, 319 F.3d 465, 469 (9th Cir. 2003) (en banc), or that the Nevada Bar Association deprived him of rights secured by the Constitution or federal statutes, *see Gibson v. United States*, 781 F.2d 1334, 1338 (9th Cir. 1986), the district court did not abuse its discretion by denying his motion for relief from judgment.

Bailey's contentions that the district court judge was biased are not supported by the record. *See Toth v. Trans World Airlines, Inc.*, 862 F.2d 1381,

1388 (9th Cir. 1988) (holding that a judge's legal decisions cannot be used as evidence of bias).

Bailey's remaining contentions are unpersuasive.

AFFIRMED.