

APR 20 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

COLVIN MCCRIGHT,

Plaintiff - Appellant,

v.

ARNOLD SCHWARZENEGGER; et al.,

Defendants - Appellees.

No. 08-16994

D.C. No. 5:08-CV-00804-JW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
James Ware, District Judge, Presiding

Submitted April 5, 2010**

Before: RYMER, McKEOWN, and PAEZ, Circuit Judges.

Colvin McCright, a California state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action pursuant to 28 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).

§ 1915A. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000), and we affirm.

The district court properly dismissed the action because a judgment in McCright's favor would necessarily imply the invalidity of his sentence, and his sentence has not been invalidated. *See Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). McCright's reliance on *Wilkinson v. Dotson*, 544 U.S. 74 (2005), is unpersuasive.

McCright's motion for default judgment is denied.

AFFIRMED.