FILED

AUG 30 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL LENOIR SMITH, Plaintiff - Appellant, v. STATE OF CALIFORNIA, Defendant - Appellee.	No. 09-15015 D.C. No. 2:08-cv-01788-MCE MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Morrison C. England, Jr., District Judge, Presiding

Submitted August 10, 2010**

Before: O'SCANNLAIN, HAWKINS, and IKUTA, Circuit Judges.

Michael Lenoir Smith, a California state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging that the use of California's "three strikes" law in sentencing him violated his constitutional

* 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).

rights. 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 concluded that Smith's claims may not be pursued as part of a § 1983 action. *See Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994).

To the extent Smith challenges the Supreme Court's decision in *Heck*, we are bound to follow that decision until it is explicitly overruled by that Court. *See Agostini v. Felton*, 521 U.S. 203, 237 (1997) (lower courts should "'leav[e] to this Court the prerogative of overruling its own decisions'"). To the extent Smith makes a facial challenge to California's "three strikes" law, and has standing to do so, the Supreme Court has upheld California's "three strikes" law against constitutional challenge, *see Ewing v. California*, 538 U.S. 11, 24-28 (2003), and we are bound by that decision, *see Agostini*, 521 U.S. at 237.

AFFIRMED.