

OCT 06 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GREGORY McCLELLAN,

Plaintiff - Appellant,

v.

DAVID MOUNTAIN; P. HEARD,

Defendants - Appellees.

No. 09-15596

D.C. No. 1:09-cv-00256-LJO-GSA

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O’Neill, District Judge, Presiding

Submitted September 13, 2010**

Before: SILVERMAN, CALLAHAN, and N.R. SMITH, Circuit Judges.

Gregory McClellan appeals pro se from the district court’s judgment dismissing his 42 U.S.C. § 1983 action alleging claims concerning parole conditions and revocation of parole. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Weilburg v. Shapiro*, 488 F.3d 1202, 1205 (9th Cir. 2007).

* 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).

We may affirm on any ground supported by the record. *Johnson v. Riverside Healthcare Sys. LP*, 534 F.3d 1116, 1121 (9th Cir. 2008). We affirm in part, vacate in part, and remand.

We affirm the dismissal of McClellan's claims challenging parole conditions. *See Hatton v. Bonner*, 356 F.3d 955, 961-67 (9th Cir. 2004) (rejecting ex post facto challenge); *Neal v. Shimoda*, 131 F.3d 818, 826-27 (9th Cir. 1997) (same); *see also United States v. Bee*, 162 F.3d 1232, 1234-35 (9th Cir. 1998) (rejecting constitutional challenge to condition of supervised release).

However, we vacate the dismissal under *Heck v. Humphrey*, 512 U.S. 477 (1994), of McClellan's claim challenging parole revocation. The district court did not expressly consider the *Heck* exception set forth in *Nonnette v. Small*, 316 F.3d 872 (9th Cir. 2002). Accordingly, we vacate and remand for further proceedings on this claim.

McClellan shall bear his own costs on appeal.

AFFIRMED in part, VACATED in part, and REMANDED.