

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NOT FOR PUBLICATION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).

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\* 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.**