

OCT 29 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DAVID P. VANDAMENT,  
  
Plaintiff - Appellant,  
  
v.  
  
MARK DUNCAN, Commander; et al.,  
  
Defendants - Appellees.

No. 08-35973

D.C. No. 3:08-cv-05522-RJB

MEMORANDUM\*

Appeal from the United States District Court  
for the Western District of Washington  
Robert J. Bryan, District Judge, Presiding

Submitted October 19, 2010\*\*

Before: O'SCANNLAIN, TALLMAN, and BEA, Circuit Judges.

David P. Vandament, a Washington state prisoner, appeals pro se from the district court's judgment dismissing without prejudice his 42 U.S.C. § 1983 action.

We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal

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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).

under 28 U.S.C. § 1915(e)(2), *Huftile v. Miccio-Fonseca*, 410 F.3d 1136, 1138 (9th Cir. 2005), and may affirm on any ground supported by the record, *O'Guinn v. Lovelock Corr. Ctr.*, 502 F.3d 1056, 1059 (9th Cir. 2007). We affirm.

The district court properly dismissed without prejudice Vandament's claims based on arrests, searches and seizure. *See Harvey v. Waldron*, 210 F.3d 1008, 1013 (9th Cir. 2000), *overruled on other grounds by Wallace v. Kato*, 549 U.S. 384 (2007) ("a § 1983 action that would call into question the lawfulness of a plaintiff's conviction or confinement is not cognizable" under *Heck v. Humphrey*, 512 U.S. 477 (1994)). Because amendment would be futile, the district court properly dismissed these claims without leave to amend. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995). We are not persuaded that any remaining claims are cognizable or could be cured by amendment. *See id.*

We do not consider arguments raised for the first time on appeal. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999).

**AFFIRMED.**