

SEP 29 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT WILSON STEWART, Jr., AKA
Robert Stewart, AKA Robert W. Stewart,

Plaintiff - Appellant,

v.

JOSEPH WELTY, Asst. U.S. Attorney; et
al.,

Defendants - Appellees.

No. 10-16576

D.C. No. 2:10-cv-01214-SRB-
ECV

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Susan R. Bolton, District Judge, Presiding

Submitted September 27, 2011 **

Before: HAWKINS, SILVERMAN and W. FLETCHER, Circuit Judges.

Federal prisoner Robert Stewart appeals pro se from the district court's
judgment dismissing his action brought under *Bivens v. Six Unknown Agents of*

* 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).

Fed. Bureau of Narcotics, 403 U.S. 388 (1971), alleging that his civil rights were violated during his criminal proceedings. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under 28 U.S.C. § 1915A. *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). We affirm.

The district court properly dismissed Stewart’s action because his allegations against the United States regarding his criminal proceedings necessarily imply the invalidity of his conviction, and Stewart has not shown that his conviction has been invalidated. *See Heck v. Humphrey*, 512 U.S. 477, 487 (1994) (§ 1983 complaint in which “a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence . . . must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated”); *Martin v. Sias*, 88 F.3d 774, 775 (9th Cir. 1996) (applying *Heck* to actions brought against federal actors). We construe the judgment as a dismissal without prejudice. *See Trimble v. City of Santa Rosa*, 49 F.3d 583, 585 (9th Cir. 1995) (per curiam).

AFFIRMED.