

APR 27 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DANIEL F. BORDEN, Sr.,

Plaintiff - Appellant,

v.

R. GAUTIER; et al.,

Defendants - Appellees.

No. 10-17822

D.C. No. 2:10-cv-02435-KJN

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Kendall J. Newman, Magistrate Judge, Presiding**

Submitted April 17, 2012**

Before: LEAVY, PAEZ, and BEA, Circuit Judges.

California state prisoner Daniel F. Borden, Sr., appeals pro se from the

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** Borden consented to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c).

*** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

district court's judgment dismissing his 42 U.S.C. § 1983 action alleging malicious prosecution and other claims related to his conviction. We review de novo, *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000), and we affirm.

The district court properly dismissed without prejudice Borden's action because it appears from the face of the complaint that the action is *Heck*-barred. *See Heck v. Humphrey*, 512 U.S. 477, 483-87 (1994) (applying "the hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments . . . to § 1983 damages actions that necessarily require the plaintiff to prove the unlawfulness of his conviction or confinement").

Borden's remaining contentions are unpersuasive.

Borden's request to waive copies is granted. All other pending motions and requests are denied.

AFFIRMED.