

OCT 16 2012

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TERRENCE MATTHEWS,

Plaintiff - Appellant,

v.

OLIVIA CRAVEN; et al.,

Defendants - Appellees.

No. 11-35553

D.C. No. 1:11-cv-00245-MHW

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
Mikel H. Williams, Magistrate Judge, Presiding**

Submitted October 9, 2012***

Before: RAWLINSON, MURGUIA, and WATFORD, Circuit Judges.

Terrence Matthews, an Idaho state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging constitutional

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

** Matthews 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).

violations in connection with his parole revocation and subsequent denial of parole. 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 in part, vacate in part, and remand.

The district court properly dismissed the action because Matthews's claims are premised on his "actual innocence" and success on the merits of these claims would necessarily imply the invalidity of his confinement. *See Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). However, because the district court dismissed the action with prejudice, we vacate the judgment in part, and remand for entry of dismissal without prejudice. *See Trimble v. City of Santa Rosa*, 49 F.3d 583, 585 (9th Cir. 1995) (per curiam) (dismissals under *Heck* are without prejudice).

AFFIRMED in part, VACATED in part, and REMANDED.