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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MICHAEL GRANT,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>ROD HOPPS, Sheriff, San Bernardino County Sheriffs Department; et al.,</p> <p>Defendants - Appellees.</p>
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No. 12-55941

D.C. No. 5:12-cv-00491-UA-JPR

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Audrey B. Collins, District Judge, Presiding

Submitted February 11, 2013**

Before: FERNANDEZ, TASHIMA, and WARDLAW, Circuit Judges.

Michael Grant appeals pro se from the district court’s order denying him leave to proceed in forma pauperis (“IFP”) in his 42 U.S.C. § 1983 action. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court’s

* 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).

determination that a complaint “lack[s] arguable substance in law or fact” and for an abuse of discretion its denial of leave to proceed IFP. *Tripati v. First Nat’l Bank & Trust*, 821 F.2d 1368, 1369 (9th Cir. 1987). We reverse and remand.

The district court erred in denying Grant’s motion to proceed IFP because it determined that the action was barred under *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). However, the action was not *Heck*-barred because Grant’s underlying criminal proceedings were ongoing. *See Wallace v. Kato*, 549 U.S. 384, 393-94 (2007) (recognizing that *Heck* applies only when an outstanding criminal conviction already exists and instructing that civil proceedings should be stayed while related criminal charges are pending). Accordingly, we reverse and remand for further proceedings.

REVERSED and REMANDED.