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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>HENRY M. MITCHELL, Jr.,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p style="text-align: center;">v.</p> <p>DR. JEFFREY GUTSTADT, individual and official capacities; et al.,</p> <p style="text-align: center;">Defendants - Appellees.</p>
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No. 13-57051

D.C. No. 2:13-cv-08089-GAF-RZ

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Gary A. Feess, District Judge, Presiding

Submitted June 25, 2014\*\*

Before: HAWKINS, TALLMAN, and NGUYEN, Circuit Judges.

California state prisoner Henry M. Mitchell, Jr., appeals pro se from the district court’s judgment dismissing his civil rights action alleging a conspiracy to violate his constitutional rights. We have jurisdiction under 28 U.S.C. § 1291. We

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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).

review de novo. *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). We affirm.

The district court properly dismissed Mitchell’s action as *Heck*-barred because success on the merits of his claims would necessarily imply the invalidity of his conviction or sentence, and Mitchell failed to allege that his conviction has been invalidated. See *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994) (holding that, in order to recover damages for an allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a plaintiff must prove “that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court’s issuance of a writ of habeas corpus”); *McQuillion v. Schwarzenegger*, 369 F.3d 1091, 1097 n.4 (9th Cir. 2004) (*Heck* “applies equally” to claims brought under 42 U.S.C. § 1985).

**AFFIRMED.**