

AUG 19 2014

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CHARLES H. HILL,

Plaintiff - Appellant,

v.

DEBRA A. BOOKOUT,

Defendant - Appellee.

No. 13-16891

D.C. No. 3:13-cv-00382-LRH-
WGC

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Larry R. Hicks, District Judge, Presiding

Submitted August 13, 2014**

Before: SCHROEDER, THOMAS, and HURWITZ, Circuit Judges.

Nevada state prisoner Charles H. Hill appeals pro se from the district court's judgment dismissing his action under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), against an assistant federal

* 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).

public defender for alleged ineffective assistance of counsel during his federal habeas proceedings. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000) (dismissal under 28 U.S.C. § 1915A); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (order) (dismissal under 28 U.S.C. § 1915(e)(2)). We may affirm on any ground supported by the record, *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121 (9th Cir. 2008), and we affirm.

Dismissal of Hill's action was proper because a federal public defender does not act under color of federal law when performing the traditional role of a lawyer representing an indigent criminal defendant. *See Bivens*, 403 U.S. at 389 (for a *Bivens* action, plaintiff must plead and prove that a federal officer acted under color of federal law during the alleged deprivation of a constitutional or federally protected right); *Cox v. Hellerstein*, 685 F.2d 1098, 1099 (9th Cir. 1982) (public defender does not act under color of federal law in performing the identical functions as a lawyer to an indigent defendant in a federal criminal proceeding).

Hill's remaining contentions are foreclosed by our conclusion that defendant did not act under color of federal law.

Hill's application for leave to proceed in forma pauperis, filed on May 15, 2014, is denied as moot because the district court previously granted him leave to

proceed in forma pauperis, and his in forma pauperis status continues in this court.

Hill's request for "Amended FRAP Rules Book July 2014" and "docket entries on all cases," filed on July 13, 2014, and his motion to Expand the Record, filed on August 11, 2014, are denied.

AFFIRMED.