

OCT 9 2014

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| <p>SHAUN DARNELL GARLAND,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>MATTHEW CATE, Secretary of Dep. Corr.,</p> <p>Defendant - Appellee.</p> |
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No. 13-16677

D.C. No. 2:12-cv-03095-KJM-AC

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Kimberly J. Mueller, District Judge, Presiding

Submitted September 23, 2014**

Before: W. FLETCHER, RAWLINSON, and CHRISTEN, Circuit Judges.

California state prisoner Shaun Darnell Garland appeals pro se from the district court’s judgment dismissing his 42 U.S.C. § 1983 action related to his criminal sentence. We have jurisdiction under 28 U.S.C. § 1291. We review de

* 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).

novo a dismissal under 28 U.S.C. § 1915A. *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). We affirm.

The district court properly dismissed as *Heck*-barred Garland's claim challenging the validity of his restitution fine. *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").

The district court properly dismissed as frivolous Garland's claim seeking compensation under California Penal Code § 2900.5. *See O'Loughlin v. Doe*, 920 F.2d 614, 617 (9th Cir. 1990) (defining "frivolous" as having no arguable basis in fact or law).

AFFIRMED.