

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 20 2017

FOR THE NINTH CIRCUIT

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

LINCOLN D. FINLEY, Jr.,

No. 16-15073

Plaintiff-Appellant,

D.C. No. 3:14-cv-00913-HSG

v.

MEMORANDUM*

JAMES FISCHER, Officer APD;
MICHAEL AGOSTA,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of California
Haywood S. Gilliam, Jr., District Judge, Presiding

Submitted March 8, 2017**

Before: LEAVY, W. FLETCHER, and OWENS, Circuit Judges.

Lincoln D. Finley, Jr., appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging federal and state law claims pertaining to his arrest and prosecution for driving under the influence of alcohol.

We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

under *Heck v. Humphrey*, 512 U.S. 477 (1994). *Whitaker v. Garcetti*, 486 F.3d 572, 579 (9th Cir. 2007). We affirm.

The district court properly dismissed Finley’s claims alleging a false arrest and detention without probable cause as *Heck*-barred because success on Finley’s claims would necessarily imply the invalidity of his conviction or sentence, and Finley failed to show that his conviction had been invalidated. *See Heck*, 512 U.S. at 486-87 (if “a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence . . . the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated”). We treat the dismissal of these claims as being without prejudice. *See Trimble v. City of Santa Rosa*, 49 F.3d 583, 585 (9th Cir. 1995) (dismissals under *Heck* are without prejudice).

Finley’s request for judicial notice (Docket Entry No. 3) is denied as unnecessary.

AFFIRMED.