

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 18 2023

FOR THE NINTH CIRCUIT

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

JAMES H. HAYES,

No. 22-15617

Plaintiff-Appellant,

D.C. No. 2:20-cv-02122-RFB-BNW

v.

MEMORANDUM*

CITY OF LAS VEGAS; CLARK COUNTY;
MIRAGE HOTEL AND CASINO/MGM;
JAMES MCGROTH; STEVE WOLFSON;
JOSEPH LOMBARDO, Sheriff,

Defendants-Appellees.

Appeal from the United States District Court
for the District of Nevada
Richard F. Boulware II, District Judge, Presiding

Submitted August 15, 2023**

Before: TASHIMA, S.R. THOMAS, and FORREST, Circuit Judges.

James H. Hayes appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging federal and state law claims arising out of his arrest and prosecution. We have jurisdiction under 28 U.S.C. § 1291. We review

* 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).

de novo. *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) (dismissal under 28 U.S.C. § 1915(e)(2)(B)(ii)); *Whitaker v. Garcetti*, 486 F.3d 572, 579 (9th Cir. 2007) (dismissal under *Heck v. Humphrey*, 512 U.S. 477 (1994)). We vacate and remand.

The district court found Hayes’s action to be *Heck*-barred after taking judicial notice of the fact that Hayes was adjudicated guilty for disorderly conduct in connection with his January 26, 2019 arrest for attempted burglary. However, we are unable to determine, on this record, whether Hayes’s action is *Heck*-barred. Nothing in the current record shows how Hayes’s conviction for disorderly conduct came about or the factual bases underlying the conviction. *See Lemos v. County of Sonoma*, 40 F.4th 1002, 1006-07 (9th Cir. 2022) (en banc) (to “decide whether success on a section 1983 claim would *necessarily* imply the invalidity of a conviction, we must determine which acts formed the basis for the conviction” and analyze whether the § 1983 claim negates an element of the convicted offense). We therefore vacate the district court’s judgment and remand for further proceedings. Because we vacate the judgment, we do not consider Hayes’s challenge to the district court’s order denying reconsideration.

Hayes’s request for appointment of counsel (Docket Entry No. 6) and motion to admit exhibits (Docket Entry No. 9) are denied.

VACATED and REMANDED.