

AUG 04 2008

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LOUIS RICHARD FRESQUEZ,

Plaintiff - Appellant,

v.

MOEROYK; et al.,

Defendants - Appellees.

No. 06-17273

D.C. No. CV-04-05123-AWI/LJO

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Anthony W. Ishii, District Judge, Presiding

Submitted July 22, 2008\*\*

Before: B. FLECTCHER, THOMAS and WARDLAW, Circuit Judges.

California state prisoner Louis Richard Fresquez appeals pro se from the district court's judgment dismissing for failure to state a claim his civil rights action alleging prison officials violated the Americans with Disabilities Act

---

\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

(“ADA”) and the Rehabilitation Act (“RA”) by conducting a disciplinary hearing without a sign language interpreter. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). We affirm in part, vacate in part, and remand.

The district court properly dismissed Fresquez’s claims that implicated the invalidity of a disciplinary conviction which resulted in lost good-time credits because Fresquez failed to demonstrate that the conviction had been successfully overturned. *See Heck v. Humphrey*, 512 U.S. 477, 483-84 (1994) (holding prisoner must demonstrate conviction or sentence has been successfully overturned before challenging validity of the conviction or sentence).

Fresquez’s remaining allegations concerning the conditions of his confinement are independent of his disciplinary conviction and should not have been dismissed under 28 U.S.C. § 1915A. *See Bogovich v. Sandoval*, 189 F.3d 999, 1002 (9th Cir. 1999) (finding disabled prisoner’s ADA and RA claims relating to the conditions, rather than duration or validity, of confinement are not *Heck*-barred); *see also Simpson v. Thomas*, 528 F.3d 685, 696 (9th Cir. 2008) (holding that *Heck* is not an evidentiary doctrine). We vacate and remand to the district court for further proceedings.

**AFFIRMED in part, VACATED in part, and REMANDED.**