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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>THOMAS HAWKINS, III,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>STATE OF CALIFORNIA; et al.,</p> <p>Defendants - Appellees.</p>
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No. 08-56151

D.C. No. 2:08-cv-04374-UA

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Audrey B. Collins, District Judge, Presiding

Submitted February 23, 2009**

Before: KOZINSKI, Chief Judge, HAWKINS and GOULD, Circuit Judges.

This is an appeal from the district court's order denying appellant Thomas Hawkins, III, leave to file his complaint without prepayment of the filing fee.

* 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).

On October 8, 2008, this court denied appellant's motion to proceed in forma pauperis on appeal and ordered appellant to show cause why the district court's order should not be summarily affirmed.

We have reviewed the record and appellant's response to the court's October 8, 2008 order to show cause. We find that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard).

The district court's denial of leave to proceed in forma pauperis is reviewed for abuse of discretion. *See Calhoun v. Stahl*, 254 F.3d 845 (9th Cir. 2001). The district court found that appellant's civil rights action was legally and/or factually patently frivolous and was barred under *Heck v. Humphrey*, 512 U.S. 477 (1994).

Appellant's complaint asserts that the process and outcome of his criminal trial violated his Constitutional rights. In *Heck v. Humphrey*, the United States Supreme Court held that in order to recover damages under 42 U.S.C. § 1983 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 state tribunal authorized to make such determination, or called into question by federal court's issuance of

writ of habeas corpus.” *Heck v. Humphrey*, 512 U.S. 477, 486-487 (1994).

Appellant has not asserted, either in this court or before the district court, that he would be able to meet this requirement. The district court did not abuse its discretion in denying appellant leave to proceed in forma pauperis.

Accordingly, we summarily affirm the district court’s judgment.

All pending motions are denied as moot.

AFFIRMED.