

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 26 2009

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

TIMOTHY ALLEN FOX,

Plaintiff - Appellant,

v.

OLIVIA CRAVEN; et al.,

Defendants - Appellees.

No. 07-35910

D.C. No. CV-05-00494-LMB

MEMORANDUM *

Appeal from the United States District Court
for the District of Idaho
Larry M. Boyle, Magistrate Judge, Presiding **

Submitted March 18, 2009***

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Timothy Allen Fox appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging he was improperly denied parole.

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

** The parties consented to the jurisdiction of the magistrate judge.

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

We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo, *Barnett v. Centoni*, 31 F.3d 813, 815-16 (9th Cir. 1994) (per curiam), and we dismiss in part and affirm in part.

While this appeal was pending, Fox was released on parole. To the extent Fox sought declaratory and injunctive relief in the form of a new parole hearing or parole eligibility determination, we dismiss the appeal as moot. *See Dilley v. Gunn*, 64 F.3d 1365, 1368 (9th Cir. 1995). To the extent Fox sought to expunge allegedly false information from his presentence report so it could not be used against him in the future, the district court properly dismissed the claim because such a claim must be brought before the sentencing state court. *See Idaho Criminal Rule 32*.

DISMISSED in part; AFFIRMED in part.