

APPENDIX G

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 16 2020

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

CARL DWIGHT DAVIS,

Plaintiff-Appellant,

v.

DAVID SHINN, Director, Dept of
Correction, State of Arizona,

Defendant-Appellee.

No. 20-15790

D.C. No. 2:20-cv-00163-GMS-
MHB

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
G. Murray Snow, District Judge, Presiding

Submitted September 8, 2020**

Before: TASHIMA, SILVERMAN, and OWENS, Circuit Judges.

Arizona state prisoner Carl Dwight Davis appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging claims related to his imprisonment. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's dismissal under 28 U.S.C. § 1915A. *Resnick v. Hayes*, 213

* 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).

F.3d 443, 447 (9th Cir. 2000). We affirm.

The district court properly dismissed Davis's action as barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), because success in this action would necessarily imply the invalidity of Davis's conviction or sentence, and Davis failed to allege facts sufficient to show that his conviction or sentence has been invalidated. *See Wilkinson v. Dotson*, 544 U.S. 74, 78 (2005) (a prisoner in state custody cannot use a § 1983 action to challenge the fact or duration of his confinement but must instead seek federal habeas corpus relief).

We do not consider facts or documents that were not presented to the district court. *See United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990).

Davis's pending motion (Docket Entry No. 16) is denied. To the extent Davis requests relief related to the conditions of his confinement, his request is denied as outside the scope of this appeal.

AFFIRMED.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
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9 Carl Dwight Davis,

10 Plaintiff,

11 v.

12 David Shinn,

13 Defendant.
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NO. CV-20-00163-PHX-GMS (MHB)

**JUDGMENT OF DISMISSAL IN A
CIVIL CASE**

15 **Decision by Court.** This action came for consideration before the Court. The
16 issues have been considered and a decision has been rendered.

17 IT IS ORDERED AND ADJUDGED that pursuant to the Court's Order filed
18 April 15, 2020, judgment of dismissal is entered. Plaintiff to take nothing, and the
19 complaint and action are dismissed for failure to state a claim pursuant to 28 U.S.C. §
20 1915A(b)(1).

21 Debra D. Lucas
22 Acting District Court Executive/Clerk of Court

23 April 15, 2020

24 By s/ L. Dixon
25 Deputy Clerk

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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Carl Dwight Davis,

Plaintiff,

11 v.

12 David Shinn,

13 Defendant.

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No. CV 20-00163-PHX-GMS (MHB)

ORDER

15 On January 22, 2020, Plaintiff Carl Dwight Davis, who is confined in the Arizona
16 State Prison Complex-Eyman, filed an unsigned pro se civil rights Complaint pursuant to
17 42 U.S.C. § 1983 (Doc. 1), an incomplete Application to Proceed In Forma Pauperis, and
18 a Motion to Appoint Counsel. In a February 19, 2020 Order, the Court directed Plaintiff
19 to file a signature certificate; Plaintiff returned the signature certificate the same day. On
20 February 26, 2020, the Court denied the Motion to Appoint Counsel and denied the
21 Application to Proceed with leave to refile. On March 2, 2020, Plaintiff filed a new
22 Application to Proceed In Forma Pauperis (Doc. 11). The Court will dismiss this action.

23 **I. Application to Proceed In Forma Pauperis and Filing Fee**

24 The Court will grant Plaintiff's Application to Proceed In Forma Pauperis. 28
25 U.S.C. § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C.
26 § 1915(b)(1). The Court will assess an initial partial filing fee of \$21.18. The remainder
27 of the fee will be collected monthly in payments of 20% of the previous month's income
28 credited to Plaintiff's trust account each time the amount in the account exceeds \$10.00.

1 28 U.S.C. § 1915(b)(2). The Court will enter a separate Order requiring the appropriate
 2 government agency to collect and forward the fees according to the statutory formula.

3 **II. Statutory Screening of Prisoner Complaints**

4 The Court is required to screen complaints brought by prisoners seeking relief
 5 against a governmental entity or an officer or an employee of a governmental entity. 28
 6 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff
 7 has raised claims that are legally frivolous or malicious, that fail to state a claim upon which
 8 relief may be granted, or that seek monetary relief from a defendant who is immune from
 9 such relief. 28 U.S.C. § 1915A(b)(1)–(2).

10 A pleading must contain a “short and plain statement of the claim *showing* that the
 11 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does
 12 not demand detailed factual allegations, “it demands more than an unadorned, the-
 13 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
 14 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere
 15 conclusory statements, do not suffice.” *Id.*

16 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
 17 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,
 18 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content
 19 that allows the court to draw the reasonable inference that the defendant is liable for the
 20 misconduct alleged.” *Id.* “Determining whether a complaint states a plausible claim for
 21 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
 22 experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s specific factual
 23 allegations may be consistent with a constitutional claim, a court must assess whether there
 24 are other “more likely explanations” for a defendant’s conduct. *Id.* at 681.

25 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts
 26 must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338, 342
 27 (9th Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less stringent

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1 standards than formal pleadings drafted by lawyers.’’ *Id.* (quoting *Erickson v. Pardus*, 551
2 U.S. 89, 94 (2007) (per curiam)).

3 If the Court determines that a pleading could be cured by the allegation of other
4 facts, a pro se litigant is entitled to an opportunity to amend a complaint before dismissal
5 of the action. *See Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc).
6 Plaintiff’s Complaint will be dismissed for failure to state a claim, without leave to amend
7 because the defects cannot be corrected.

8 **III. Complaint**

9 Plaintiff names Arizona Department of Corrections Director David Shinn as
10 Defendant in his two-count Complaint. Plaintiff seeks money damages “for every day of
11 illegal detention until the state courts adjudicate the constitutional violations represented
12 by the Ariz. Attorney General,” and legal fees and costs.

13 In Count One, Plaintiff alleges “the state courts violated the 14th Amendment by
14 depriving Plaintiff’s protected liberty interest without due process of law.” Plaintiff asserts
15 he is “still being illegally incarcerated more than five years after the Arizona Attorney
16 General’s disclosure and written legal opinion establishing constitutional due process and
17 double jeopardy violations.” Plaintiff contends the Attorney General’s “opinion and
18 prescribed remedy affirms the Plaintiff’s acquittal by the trial court to the one and only
19 alleged day time incident on the couch,” but the “state courts have refused to adjudicate
20 the constitutional violations and claim of illegal detention.”

21 In Count Two, Plaintiff claims “the state courts violated the [Plaintiff’s] Fifth
22 Amendment right to constitutional double jeopardy protection which encompasses
23 [Plaintiff’s] illegal detention.” Plaintiff claims the Arizona Attorney General “disclosed
24 the double jeopardy violation and court error in the Petitioner’s 2013 District Court habeas
25 proceedings.” Plaintiff states he returned “to the state courts for proper adjudication and

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1 the appropriate relief applicable to the Ariz. Attorney General's written opinion," but the
2 state courts "continued denial of addressing the meritorious double jeopardy violation."

3 **IV. Failure to State a Claim**

4 A prisoner's claim for damages cannot be brought under 42 U.S.C. § 1983 if "a
5 judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction
6 or sentence," unless the prisoner demonstrates that the conviction or sentence has
7 previously been reversed, expunged, or otherwise invalidated. *Heck v. Humphrey*, 512
8 U.S. 477, 486-87 (1994).

9 Plaintiff challenged his conviction and sentence in federal habeas proceedings in
10 *Davis v. Ryan*, CV 12-00132-PHX-GMS. In a September 11, 2013 Order in that case, the
11 Court denied habeas relief and dismissed the case with prejudice. Judgment was entered
12 the same day. Plaintiff appealed the dismissal and, on February 10, 2014, the Ninth Circuit
13 Court of Appeals denied his request for a certificate of appealability.

14 Plaintiff's claims in this case directly challenge the validity of his conviction and
15 sentence. Plaintiff was denied habeas relief in this Court and he does not demonstrate that
16 his conviction or sentence have been invalidated by a state court. Plaintiff's claims are
17 therefore barred by *Heck*, and the Court will dismiss the Complaint and this case.

18 **IT IS ORDERED:**

19 (1) Plaintiff's Application to Proceed In Forma Pauperis (Doc. 11) is **granted**.

20 (2) As required by the accompanying Order to the appropriate government
21 agency, Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing fee
22 of \$21.18.

23 (3) The Complaint (Doc. 1) is **dismissed** for failure to state a claim pursuant to
24 28 U.S.C. § 1915A(b)(1), and the Clerk of Court must enter judgment accordingly.

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5 Dated this 15th day of April, 2020.

G. Murray Snow
G. Murray Snow
Chief United States District Judge

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FOR THE NINTH CIRCUIT

DEC 8 2020

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No. 20-15790

D.C. No. 2:20-cv-00163-GMS-
MHB

District of Arizona,
Phoenix

ORDER

Before: TASHIMA, SILVERMAN, and OWENS, Circuit Judges.

Davis's petition for panel rehearing (Docket Entry No. 20) is denied.

No further filings will be entertained in this closed case.

**Additional material
from this filing is
available in the
Clerk's Office.**