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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MATTHEW RITTER,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>MIKE MARSHOWSKI; et al.,</p> <p>Defendants - Appellees.</p>

No. 12-17041

D.C. No. 3:12-cv-00194-LRH-WGC

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Larry R. Hicks, District Judge, Presiding

Submitted July 22, 2014**

Before: GOODWIN, CANBY, and CALLAHAN, Circuit Judges.

Matthew Ritter appeals pro se from the district court’s judgment dismissing his 42 U.S.C. § 1983 action alleging violations of his constitutional rights. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (order) (dismissal under 28

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

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

U.S.C. § 1915(e)(2)). We reverse and remand.

The district court erred in dismissing Ritter's action under *Heck v. Humphrey*, 512 U.S. 477, 487 (1994), because Ritter's action did not "necessarily imply the invalidity of his conviction[,]" as Ritter alleged facts showing that his conviction had been reversed. *Id.*

Moreover, the district court did not have the benefit of the documents that Ritter submitted for the first time on appeal relating to whether his action was barred under *Heck* or barred by the statute of limitations. Accordingly, we remand for the district court to review the complaint again and provide leave to amend if any deficiencies could be cured by amendment. *See Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) ("A district court should not dismiss a pro se complaint without leave to amend unless it is absolutely clear that the deficiencies of the complaint could not be cured by amendment." (citation and internal quotation marks omitted)).

REVERSED and REMANDED.