

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-7662

ROBERT KITHER RUSSELL,

Plaintiff - Appellant,

v.

GUILFORD COUNTY MUNICIPALITY; HIGH POINT COURT HOUSE; JUDGE
HENRY FRYE; JAMES GREEN,

Defendants - Appellees.

Appeal from the United States District Court for the Middle
District of North Carolina, at Greensboro. Thomas D. Schroeder,
District Judge. (1:14-cv-00831-TDS-LPA)

Submitted: March 24, 2015

Decided: March 31, 2015

Before SHEDD, FLOYD, and THACKER, Circuit Judges.

Affirmed as modified by unpublished per curiam opinion.

Robert Kither Russell, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Robert Kither Russell appeals the district court's order adopting the recommendation of the magistrate judge and dismissing his 42 U.S.C. § 1983 (2012) complaint as frivolous pursuant to 28 U.S.C. § 1915A(b)(1) (2012). We have reviewed the record and find no reversible error. We conclude that Russell's claim is not cognizable because his state conviction has not been overturned or called into question. See Heck v. Humphrey, 512 U.S. 477, 486-87 (1994); see also Wilkinson v. Dotson, 544 U.S. 74, 81-82 (2005) (applying Heck to claims of equitable relief). Accordingly, we affirm substantially for the reasons stated by the district court, see Russell v. Guilford Cnty. Mun., No. 1:14-cv-00831-TDS-LPA (M.D.N.C. Oct. 31, 2014), but we modify the dismissal to be without prejudice because Russell may refile his claims should his conviction ever be invalidated by the appropriate court. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED AS MODIFIED