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2
3 UNITED STATES DISTRICT COURT
4 NORTHERN DISTRICT OF CALIFORNIA

5
6 TERRY RAY HAWES,

7 Plaintiff,

8 v.

9 EDWARD S. BERBERIAN, et al.,

10 Defendants.

Case No. [17-cv-05566-WHO](#) (PR)

ORDER OF DISMISSAL

11
12 For the fourth time this year, plaintiff Terry Hawes seeks relief for injuries allegedly
13 caused by his 2009 state convictions for rape and other crimes. In two of the civil rights
14 actions, he attempted to sue the governor (whose connection to Hawes's convictions
15 plaintiff never established) and the trial judge who presided over his criminal trial (who is
16 absolutely immune from civil liability for damages for acts performed in a judicial
17 capacity).¹ The third was dismissed because Hawes failed to pay the filing fee or submit a
18 complete application to proceed *in forma pauperis*.² In the fourth and present action, he
19 sues the district attorney and an assistant district attorney for being part of a conspiracy to
20 deprive him of a constitutionally fair trial.

21 As with the prior two actions, the current 42 U.S.C. § 1983 suit is barred by *Heck v.*
22 *Humphrey*, 512 U.S. 477 (1994). As was made clear in two prior dismissal orders, *Heck*
23 bars section 1983 actions for damages for an allegedly unconstitutional conviction or
24 imprisonment, or for other harm caused by actions whose unlawfulness would render a
25 conviction or sentence invalid. *Id.* at 486-487. When a state prisoner seeks damages in a

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27 ¹ *Hawes v. Brown*, 17-cv-02400-WHO; and *Hawes v. Brown*, 17-cv-05166-WHO.

28 ² *Hawes v. State of California*, 17-cv-01168-WHO.

1 section 1983 suit, the district court must therefore consider whether a judgment in favor of
2 the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it
3 would, the complaint must be dismissed unless the plaintiff can demonstrate that the
4 conviction or sentence has already been invalidated. *Id.* at 487. The *Heck* bar applies here
5 because a judgment that defendants were part of a conspiracy to violate his right to a fair
6 trial would necessarily imply the invalidity of his convictions and sentence.

7 The *Heck* bar can be avoided if a plaintiff can prove that the conviction or sentence
8 has been reversed on direct appeal, expunged by executive order, declared invalid by a
9 state tribunal authorized to make such determination, or called into question by a federal
10 court's issuance of a writ of habeas corpus. *Id.*

11 Hawes has made no showing that *Heck* does not bar his case.

12 The action is also barred because a state prosecuting attorney enjoys absolute
13 immunity from damages liability under 42 U.S.C. § 1983 for his conduct in "pursuing a
14 criminal prosecution" insofar as he acts within his role as an "advocate for the State" and
15 his actions are "intimately associated with the judicial phase of the criminal process."
16 *Imbler v. Pachtman*, 424 U.S. 409, 430-31 (1976). Pursuing criminal charges against
17 Hawes are without doubt acts performed in the district attorney's and assistant district
18 attorney's roles as advocates for the state.

19 Accordingly, this action is DISMISSED with prejudice.

20 **CONCLUSION**

21 This federal civil rights action is DISMISSED with prejudice. The Clerk shall enter
22 judgment in favor of defendants, and close the file.

23 **IT IS SO ORDERED.**

24 **Dated:** October 26, 2017

25 
26 WILLIAM H. ORRICK
27 United States District Judge
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