

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3
4 TERRY RAY HAWES,
5 Plaintiff,

6 v.

7 SCOTT KERNAN, et al.,
8 Defendants.

Case No. [17-cv-05969-WHO](#) (PR)

ORDER OF DISMISSAL

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10 For the sixth time this year, plaintiff Terry Hawes seeks relief for injuries allegedly
11 caused by his 2009 state convictions for rape and other crimes. In two of the civil rights
12 actions, he attempted to sue the governor (whose connection to Hawes's convictions
13 plaintiff never established) and the trial judge who presided over his criminal trial (who is
14 absolutely immune from civil liability for damages for acts performed in a judicial
15 capacity).¹ The third was dismissed because Hawes failed to pay the filing fee or submit a
16 complete application to proceed *in forma pauperis*.² The fourth, which named the district
17 attorney and an assistant district attorney as defendants, and the fifth, which named the
18 governor and his legal affairs secretary, were dismissed because they, like the present
19 action, were barred by *Heck*.³ In the sixth and present action, Hawes sues the state
20 governor and the Secretary of the CDCR for failing to free him even after he gave them
21 evidence that his trial was unfair.

22 As with the prior actions, the current 42 U.S.C. § 1983 suit is barred by *Heck v.*
23 *Humphrey*, 512 U.S. 477 (1994). As was made clear in the prior dismissal orders, *Heck*

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

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

27 ³ *Hawes v. Berberian*, 17-cv-05566-WHO; and *Hawes v. Krause*, 17-cv-05968-WHO.
28 *Berberian* was dismissed with prejudice because state prosecutors are absolutely immune from damages liability under section 1983 for acts taken within their role as advocates of the state.

1 bars section 1983 actions for damages for an allegedly unconstitutional conviction or
2 imprisonment, or for other harm caused by actions whose unlawfulness would render a
3 conviction or sentence invalid. *Id.* at 486-487. When a state prisoner seeks damages in a
4 section 1983 suit, the district court must therefore consider whether a judgment in favor of
5 the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it
6 would, the complaint must be dismissed unless the plaintiff can demonstrate that the
7 conviction or sentence has already been invalidated. *Id.* at 487. The *Heck* bar applies here
8 because a judgment that defendants failed to free him would necessarily imply the
9 invalidity of his convictions and sentence.

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

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

15 Accordingly, this action is DISMISSED without prejudice. Hawes may refile his
16 suit if he can show that his conviction has been invalidated in one of the ways specified in
17 *Heck*.

18 **CONCLUSION**

19 This federal civil rights action is DISMISSED without prejudice. The Clerk shall
20 enter judgment in favor of defendants, and close the file.

21 **IT IS SO ORDERED.**

22 **Dated:** October 31, 2017

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24 WILLIAM H. ORRICK
25 United States District Judge
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