

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-6276

SILAS MOBLEY,

Plaintiff - Appellant,

v.

ANNE M. TOMPKINS; ROBERT CONRAD, JR.; RICHARD CULLER;
DAVID A. KEESLER; JAMES BRYANT,

Defendants - Appellees.

Appeal from the United States District Court for the Western
District of North Carolina, at Charlotte. Malcolm J. Howard,
Senior District Judge. (3:11-cv-00212-MJH)

Submitted: May 24, 2012

Decided: May 31, 2012

Before MOTZ and DAVIS, Circuit Judges, and HAMILTON, Senior
Circuit Judge.

Affirmed as modified by unpublished per curiam opinion.

Silas Junior Mobley, Appellant Pro Se. Paul Bradford Taylor,
OFFICE OF THE UNITED STATES ATTORNEY, Asheville, North Carolina,
for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Silas Mobley appeals the district court's order dismissing under 28 U.S.C. § 1915A(b)(1) (2006) his civil action challenging his federal convictions and seeking damages and injunctive relief. The district court properly dismissed the action because Mobley has not shown that his convictions have been overturned or called into question. See Heck v. Humphrey, 512 U.S. 477, 486-87 (1994) (holding that a 42 U.S.C. § 1983 (2006) suit for monetary damages is barred if prevailing in the action would necessarily require the plaintiff to prove the unlawfulness of his conviction); Harvey v. Horan, 278 F.3d 370, 375 (4th Cir. 2002) (applying Heck to claims for injunctive relief), abrogated on other grounds by Skinner v. Switzer, 131 S. Ct. 1289, 1298-1300 (2011); Clemente v. Allen, 120 F.3d 703, 705 (7th Cir. 1997) (per curiam) (stating that the rationale in Heck applies to actions under Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971)).

However, we modify the district court's order to reflect that the dismissal is without prejudice to Mobley's ability to re-file his claims if his federal convictions are overturned or called into question by the appropriate court and affirm the order as modified. We dispense with oral argument because the facts and legal contentions are adequately presented

in the materials before the court and argument would not aid the decisional process.

AFFIRMED AS MODIFIED