

JUL 06 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MICHAEL SEMBACH,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>CITY OF CHANDLER; et al.,</p> <p>Defendants - Appellees.</p>

No. 08-16631

D.C. No. 2:07-cv-00111-JWS

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
John W. Sedwick, Chief Judge, Presiding

Submitted June 16, 2009**

Before: PAEZ, TALLMAN, and N.R. SMITH, Circuit Judges.

Michael Sembach appeals pro se from the district court’s summary judgment in his 42 U.S.C. § 1983 action alleging wrongful arrest and detention. We have

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

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

jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo. *Erdman v. Cochise County*, 926 F.2d 877, 881 (9th Cir. 1991). We affirm.

The district court properly granted summary judgment on Sembach’s Fourth and Fifth Amendment claims because Sembach failed to controvert the defendants’ evidence that his arrest was based on probable cause and made pursuant to a facially valid warrant. *See id.* at 882 (stating that an arrest and detention pursuant to a facially valid warrant is not a constitutional violation). Moreover, Sembach failed to raise a triable issue as to whether, under the circumstances, the \$200 bail amount was excessive within the meaning of the Eighth Amendment. *See Galen v. County of L.A.*, 477 F.3d 652, 662 (9th Cir. 2007) (“Excessiveness cannot be determined by a general mathematical formula, but rather turns on the correlation between the state interests a judicial officer seeks to protect and the nature and magnitude of the bail conditions imposed in a particular case.”).

Sembach’s remaining contentions are unpersuasive.

Appellees’ request for attorney’s fees is denied for failure to file a separate motion as required by Federal Rule of Appellate Procedure 38.

We deny all pending motions.

AFFIRMED.