

AUG 19 2009

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

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DAVID SCOTT HARRISON,

Plaintiff - Appellant,

v.

BONNIE M. DUMANIS, San Diego
District Attorney,

Defendant - Appellee.

No. 07-56131

D.C. No. CV-06-02470-RLH

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Roger L. Hunt, District Judge, Presiding

Submitted August 11, 2009**

Before: KLEINFELD, M. SMITH, and IKUTA, Circuit Judges.

David Scott Harrison appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action for failure to state a claim. We have

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

jurisdiction under 28 U.S.C. § 1291. We review de novo. *Kirtley v. Rainey*, 326 F.3d 1088, 1092 (9th Cir. 2003). We affirm.

The district court properly dismissed Harrison’s action because Harrison has stated no viable due process claim seeking access to the DNA evidence at issue. *See Dist. Attorney’s Office for the Third Judicial Dist. v. Osborne*, 129 S. Ct. 2308, 2320–22 (2009) (holding that plaintiff had no viable procedural due process claim because state’s procedures for post-conviction relief did not transgress recognized principles of fundamental fairness, as well as no substantive due process right to post-conviction access to DNA evidence).

AFFIRMED.