

DEC 08 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOSEPH DANNY PROPHET,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>ALLISON DUNHAM; et al.,</p> <p>Defendants - Appellees.</p>
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No. 08-16449

D.C. No. 1:07-cv-01372-OWW-DLB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Oliver W. Wanger, District Judge, Presiding

Submitted November 17, 2009**

Before: ALARCÓN, TROTT, and TASHIMA, Circuit Judges.

Joseph Danny Prophet, a California state prisoner, appeals pro se from the district court’s judgment dismissing his 42 U.S.C. § 1983 action alleging that the district attorney submitted inadmissible evidence during his criminal trial. We

* 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).

have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo a dismissal under 28 U.S.C. § 1915A. *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). We affirm.

The district court properly dismissed the claims against deputy district attorney Dunham, the prosecutor who allegedly submitted inadmissible evidence, because prosecutors are absolutely immune from damages under section 1983 when acting within the scope of their duties in presenting the state's case. *See Imbler v. Pachtman*, 424 U.S. 409, 410 (1976) (applying absolute immunity to bar a section 1983 action alleging that a prosecutor knowingly used false testimony at trial). The district court properly dismissed the claims against defendant Lavra, Prophet's defense attorney, because the complaint pleaded no facts suggesting that Lavra was a state actor or that he deprived Prophet of a constitutional right under section 1983. *See Miranda v. Clark County*, 319 F.3d 465, 469 (9th Cir. 2003) (en banc) (affirming the dismissal of plaintiff's section 1983 action against his former defense attorney for lack of state action).

AFFIRMED.