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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WHITNEY C. PHILLIPS,

Plaintiff - Appellant,

v.

MAGGIE MILLER; et al.,

Defendants - Appellees.

No. 09-35139

D.C. No. 2:08-cv-00298-EFS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Edward F. Shea, District Judge, Presiding

Submitted May 25, 2010**

Before: CANBY, THOMAS, and W. FLETCHER, Circuit Judges.

Whitney C. Phillips, a former Washington state prisoner, appeals pro se from the district court's judgment dismissing with prejudice his 42 U.S.C. § 1983

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

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

action alleging that prison officials unlawfully detained him almost three weeks past his early release date. We have jurisdiction under 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), and we affirm.

The district court properly concluded that Phillips's action is barred by the applicable three-year limitations period. *See* Wash. Rev. Code § 4.16.080(2); *see also* *Bagley v. CMC Real Estate Corp.*, 923 F.2d 758, 760 (9th Cir. 1991).

We deny Phillips's request for appointment of counsel because he fails to establish exceptional circumstances for such appointment. *See* *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

We do not consider issues raised for the first time on appeal. *See* *Foti v. City of Menlo Park*, 146 F.3d 629, 238 (9th Cir. 1998).

AFFIRMED.