

DEC 27 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WILLIAM S. NEELY,

Plaintiff - Appellant,

v.

COUNTY OF SACRAMENTO; et al.,

Defendants - Appellees.

No. 09-17318

D.C. No. 08-cv-01950-RRC

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Richard R. Clifton, Circuit Judge, Presiding**

Submitted December 14, 2010***

Before: GOODWIN, WALLACE, and W. FLETCHER, Circuit Judges.

William S. Neely, a California state prisoner, appeals pro se from the district court's judgment dismissing without prejudice his 42 U.S.C. § 1983 action alleging

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

** The Honorable Richard R. Clifton, United States Circuit Judge for the Ninth Circuit, sitting by designation.

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

defendants failed to follow the equipment manufacturer's internal standard when analyzing DNA samples used in his criminal prosecution. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Whitaker v. Garcetti*, 486 F.3d 572, 579 (9th Cir. 2007), and we affirm.

The district court properly dismissed Neely's claims regarding obstruction of justice, perjury, subornation of perjury, falsification of evidence, false arrest, and malicious prosecution because a judgment in Neely's favor would necessarily imply the invalidity of his conviction, and Neely failed to allege that his conviction has been invalidated. *See Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994).

We do not consider other matters not specifically and distinctly raised and argued in Neely's opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009) (per curiam).

Neely's remaining contentions are unpersuasive.

Neely's request for leave to amend is denied.

AFFIRMED.