

DEC 27 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RANDY LEE SODERSTROM,

Plaintiff - Appellant,

v.

TONY RACKAUCKAS, District
Attorney; et al.,

Defendants - Appellees.

No. 09-56976

D.C. No. 8:08-cv-00309-PA-SS

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Percy Anderson, District Judge, Presiding

Submitted December 14, 2010**

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

Randy Lee Soderstrom, a California state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action for failure to state

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3. Accordingly, Soderstrom's request for publication is denied.

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

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

The district court properly dismissed Soderstrom's action because Soderstrom failed to state a viable due process claim for access to the DNA evidence at issue. *See Dist. Attorney's Office for the Third Judicial Dist. v. Osborne*, 129 S. Ct. 2308, 2320 (2009) ("Federal courts may upset a State's postconviction relief procedures only if they are fundamentally inadequate to vindicate the substantive rights provided.").

Soderstrom's remaining contentions are unpersuasive.

Soderstrom's request for judicial notice is granted.

AFFIRMED.