

APR 12 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MAURICE P. OLIVIER,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>COUNTY OF LOS ANGELES,</p> <p>Defendant - Appellee.</p>

No. 07-56106

D.C. No. CV-07-02961-JFW

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

Submitted April 5, 2011**

Before: B. FLETCHER, CLIFTON, and BEA, Circuit Judges.

Maurice P. Olivier, a California state prisoner, appeals pro se from the district court’s order dismissing his 42 U.S.C. § 1983 action challenging his felony prosecution by information, rather than by grand jury indictment. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under

* 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).

28 U.S.C. § 1915A. *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). We affirm.

The district court properly dismissed Olivier's action because there is no constitutional right to be charged by way of a grand jury indictment rather than by information. *See Morford v. Hocker*, 394 F.2d 169, 170 (9th Cir.), *cert. denied*, 392 U.S. 944 (1968) (holding that the grand jury requirement of the Fifth Amendment is not applicable to the states, and prosecution via an information is not unconstitutional).

We do not consider Olivier's arguments made for the first time on appeal. *See United States v. Carlson*, 900 F.2d 1346, 1349 (9th Cir. 1990).

Olivier's motions regarding Fed. R. App. P. 44(b) and requesting entry of judgment are denied.

AFFIRMED.