

JAN 25 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>RONALD P. FOSTER,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>SANDRA COLE,</p> <p>Defendant - Appellee.</p>

No. 10-16676

D.C. No. 2:03-cv-01113-JAM-JFM

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
John A. Mendez, District Judge, Presiding

Submitted January 17, 2012**

Before: LEAVY, TALLMAN, and CALLAHAN, Circuit Judges.

California state prisoner Ronald P. Foster appeals pro se from the district court's judgment as a matter of law pursuant to Federal Rule of Civil Procedure 50 following a jury trial in Foster's 42 U.S.C. § 1983 action alleging Eighth

* 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).

Amendment violations. We have jurisdiction under 28 U.S.C. § 1291. We dismiss.

We are unable to consider Foster's contentions that the district court erred by granting defendant's motion for judgment as a matter of law, and by allegedly excluding witness testimony, because Foster failed to provide any portion of the trial transcript. *See* Fed. R. App. P. 10(b)(2); *Hall v. Whitley*, 935 F.2d 164, 165 (9th Cir. 1991) (per curiam). Furthermore, the district court did not abuse its discretion by denying without prejudice Foster's request for production of transcripts at government expense because Foster did not explain the issues that he would raise on appeal. *See McKinney v. Anderson*, 924 F.2d 1500, 1511-12 (9th Cir. 1991), *overruled on other grounds by Helling v. McKinney*, 502 U.S. 903 (1991) (reviewing for an abuse of discretion and noting that "[p]roduction of the transcript at government expense for an appellant in forma pauperis in a civil case is proper under 28 U.S.C. § 753 if a trial judge certifies that the appeal is not frivolous and presents a substantial question").

DISMISSED.