

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 16 2012

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MICHAEL WHITMORE,

Plaintiff - Appellant,

v.

COUNTY OF LOS ANGELES; ETHAN
MARQUEZ,

Defendants - Appellees.

No. 10-56566

D.C. No. 2:09-cv-04095-DMG-
PJW

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dolly M. Gee, District Judge, Presiding

Submitted May 11, 2012**
Pasadena, California

Before: PREGERSON and GRABER, Circuit Judges, and CHEN, District Judge.***

* 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).

*** The Honorable Edward M. Chen, District Judge for the U.S. District Court for Northern California, sitting by designation.

Plaintiff-Appellant Michael Whitmore (“Whitmore”) appeals the district court’s grant of summary judgment for Defendants-Appellees in this 42 U.S.C. § 1983 action. The parties are familiar with the facts underlying the appeal and thus we do not include them here.

There is no triable issue of fact that Deputy Marquez fabricated evidence. *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir. 2001) (en banc).

Additionally, Whitmore’s malicious prosecution claim fails because he has failed to demonstrate the existence of a genuine issue of fact as to whether he was prosecuted for attempted murder and for attempted removal of a firearm with malice and without probable cause. *Awabdy v. City of Adelanto*, 368 F.3d 1062, 1066 (9th Cir. 2004). Further, considering Whitmore’s criminal “judgment as a whole,” Whitmore did not receive a favorable outcome. *Casa Herrera, Inc. v. Beydown*, 83 P.3d 497, 501 (Cal. 2004) (internal quotation marks omitted); *see also Poppell v. City of San Diego*, 149 F.3d 951, 963 (9th Cir. 1998) (noting that “[a]n acquittal . . . reveals very little—if anything—about whether charges were procured with malice”).

Accordingly, the district court’s grant of summary judgment as to the foregoing claims is AFFIRMED.