

SEP 24 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MICHAEL LENOIR SMITH,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>STATE OF CALIFORNIA; et al.,</p> <p>Defendants - Appellees.</p>

No. 11-17466

D.C. No. 2:05-cv-01257-GEB-CKD

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Garland E. Burrell, Jr., District Judge, Presiding

Submitted September 10, 2012**

Before: WARDLAW, CLIFTON, and N.R. SMITH, Circuit Judges.

Michael Lenior Smith, a California state prisoner, appeals pro se from district court’s judgment dismissing without prejudice his 42 U.S.C. § 1983 action alleging constitutional violations by various prison officials. We have jurisdiction

* 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).

under 28 U.S.C. § 1291. We review for an abuse of discretion a dismissal for failure to prosecute under Fed. R. Civ. P. 41(b). *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986). We affirm.

The district court did not abuse its discretion by dismissing Smith's action without prejudice for failure to prosecute because Smith failed to file an amended pretrial statement by the deadline set by the district court. *See id.* (listing factors to guide the court's decision whether to dismiss under Rule 41(b)).

Because we affirm the district court's dismissal under Rule 41(b), we do not consider Smith's challenges to the district court's interlocutory orders. *See Al-Torki v. Kaempfen*, 78 F.3d 1381, 1386 (9th Cir. 1996) (after dismissal for failure to prosecute, interlocutory orders are not appealable regardless of whether failure to prosecute was purposeful).

AFFIRMED.