

JAN 02 2013

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANDY D. RODRIGUEZ,

Plaintiff - Appellant,

v.

MARGARET MIMS, Fresno County
Sheriff; DETENTION DIVISION AT
FRESNO COUNTY JAIL,

Defendants - Appellees.

No. 12-15963

D.C. No. 1:11-cv-01472-GSA

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Gary S. Austin, Magistrate Judge, Presiding**

Submitted December 19, 2012***

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Andy D. Rodriguez appeals pro se from the district court's judgment

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** Rodriguez consented to proceed before a magistrate judge. See 28 U.S.C. § 636(c).

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

dismissing his 42 U.S.C. § 1983 action alleging that defendants violated his constitutional rights while he was a pretrial detainee when they opened incoming mail from elected officials and government agencies. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under 28 U.S.C. §§ 1915A and 1915(e)(2). *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (order). We affirm.

The district court properly dismissed Rodriguez's action because Rodriguez failed to allege facts sufficient to show that he was deprived of a federal or constitutional right. *See Mann v. Adams*, 846 F.2d 589, 590-91 (9th Cir. 1988) (per curiam) (no constitutional violation where mail from public agencies, public officials, and news media was opened outside inmate's presence).

Rodriguez's motion for appointment of counsel, set forth in his opening brief, is denied.

AFFIRMED.