

JAN 03 2013

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>CEDRIC GREENE, Jr.,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>B. SANDERS; et al.,</p> <p>Defendants - Appellees.</p>
--

No. 12-16450

D.C. No. 1:09-cv-00336-MJS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Michael J. Seng, Magistrate Judge, Presiding**

Submitted December 19, 2012***

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

Former California state prisoner Cedric Greene, Jr., appeals pro se from the district court’s judgment following a jury trial in his 42 U.S.C. § 1983 action

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

** The parties 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).

alleging violations of his Eighth Amendment rights. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion a ruling on a motion to continue, *Danjaq LLC v. Sony Corp.*, 263 F.3d 942, 961 (9th Cir. 2001), and we affirm.

The district court did not abuse its discretion in denying Greene's motion for a continuance because Greene had not demonstrated diligence in his efforts to prepare his defense prior to the date set for trial, a continuance on the day of trial would have seriously inconvenienced the court and defendants, and Greene has failed to establish that he was prejudiced by the denial. *See United States v. Flynt*, 756 F.2d 1352, 1359 (9th Cir. 1985).

AFFIRMED.