

JAN 16 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>KENNETH A. SIERRA,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>WOODFORD, Director of Corrections; et al.,</p> <p>Defendants - Appellees.</p>
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No. 11-17049

D.C. No. 1:07-cv-00149-LJO-GSA

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O'Neill, District Judge, Presiding

Submitted January 15, 2013**

Before: SILVERMAN, BEA, and NGUYEN, Circuit Judges.

California state prisoner Kenneth A. Sierra appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action for failure to prosecute and to obey a court order. We have jurisdiction under 28 U.S.C. § 1291. We

* 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).

review for an abuse of discretion. *Ash v. Cvetkov*, 739 F.2d 493, 495 (9th Cir. 1984). We affirm.

The district court did not abuse its discretion by dismissing the action because Sierra failed to submit a filing fee after being warned that failure to do so would result in dismissal. *See id.* at 496-97 (listing factors to consider before dismissing an action for lack of prosecution and explaining that “the district court is in a much better position than we are to determine what period of delay can be endured before its docket becomes unmanageable”).

We do not consider Sierra’s contentions concerning the district court’s order denying his application to proceed in forma pauperis. *See id.* at 497-98 (interlocutory orders are not appealable after dismissal without prejudice for failure to prosecute).

AFFIRMED.