

MAR 22 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WILLIAM CATO SELLS, Jr.,

Plaintiff - Appellant,

v.

E.K. McDANIEL, Warden; et al.,

Defendants - Appellees.

No. 12-15842

D.C. No. 3:08-cv-00170-RCJ-
WGC

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Robert Clive Jones, Chief Judge, Presiding

Submitted March 12, 2013**

Before: PREGERSON, REINHARDT, and W. FLETCHER, Circuit Judges.

William Cato Sells, Jr., a Washington state prisoner formerly incarcerated in Nevada, appeals pro se from the district court’s judgment dismissing his 42 U.S.C. § 1983 action for failure to prosecute. We have jurisdiction under 28 U.S.C.

* 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).

§ 1291. We review for an abuse of discretion. *Al-Torki v. Kaempfen*, 78 F.3d 1381, 1384 (9th Cir. 1996). We affirm.

The district court did not abuse its discretion in dismissing Sells's action for failure to prosecute after finding that Sells was unable to appear for trial due to his incarceration in another state and considering all reasonable alternatives to dismissal. *See id.* at 1384-85 (discussing factors that district courts must consider before dismissing under Federal Rule of Civil Procedure 41(b)).

AFFIRMED.