

MAR 24 2016

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U.S. COURT OF APPEALS

## NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TONY ASBERRY,

Plaintiff - Appellant,

v.

ALAN HERNANDEZ, Associate Warden;  
et al.,

Defendants - Appellees.

No. 15-55256

D.C. No. 3:13-cv-02573-WQH-  
JLB

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
William Q. Hayes, District Judge, Presiding

Submitted March 15, 2016\*\*

Before: GOODWIN, LEAVY, and CHRISTEN, Circuit Judges.

Tony Asberry, a California state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging deliberate indifference to his serious medical needs and denial of his right to access the

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\* 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).

courts. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion, *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992), and we affirm.

The district court did not abuse its discretion in dismissing Asberry's action after Asberry failed to file an amended complaint. *See id.* at 1260-61 (setting forth factors to consider before dismissing an action for failure to comply with a court order). For the first time on appeal, Asberry contends that he did not receive the district court's August 12, 2014 order granting him leave to amend his access-to-courts claim. Nevertheless, we affirm the district court's dismissal of Asberry's action because amendment would be futile.

**AFFIRMED.**