

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 26 2017

FOR THE NINTH CIRCUIT

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

TONY TRAN,

Plaintiff-Appellant,

v.

D. DAVEY, Warden, Corcoran State Prison,

Defendant-Appellee.

No. 17-16175

D.C. No. 1:15-cv-01591-LJO-BAM

MEMORANDUM*

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

Submitted October 23, 2017**

Before: McKEOWN, WATFORD, and FRIEDLAND, Circuit Judges.

California state prisoner Tony Tran appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging interference with mail and violation of Tran's right to access the courts. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal for failure to state a claim under 28

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

U.S.C. § 1915A. *Hamilton v. Brown*, 630 F.3d 889, 892 (9th Cir. 2011). We affirm.

The district court properly dismissed Tran’s action because Tran failed to allege facts sufficient to show that defendant personally participated in the alleged rights deprivation. *See Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002) (outlining requirement of personal participation in alleged constitutional violation); *see also Starr v. Baca*, 652 F.3d 1202, 1207-08 (9th Cir. 2011) (elements for supervisory liability under § 1983).

The district court did not abuse its discretion by denying Tran’s motion for appointment of counsel because Tran did not establish exceptional circumstances. *See Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (setting forth standard of review and “exceptional circumstances” requirement).

We do not consider arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.