

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 21 2020

FOR THE NINTH CIRCUIT

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

MICHAEL JOHN GADDY,

Plaintiff-Appellant,

v.

C. E. DUCART, Associate Warden; et al.,

Defendants-Appellees.

No. 19-15149

D.C. No. 4:18-cv-04558-HSG

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Haywood S. Gilliam, Jr., District Judge, Presiding

Submitted April 7, 2020**

Before: TASHIMA, BYBEE, and WATFORD, Circuit Judges.

California state prisoner Michael John Gaddy appeals pro se the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging Eighth Amendment and due process claims relating to the calculation of his parole eligibility date. We have jurisdiction under 28 U.S.C. § 1291. We review de novo

* 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).

a dismissal under 28 U.S.C. § 1915A. *Wilhelm v. Rotman*, 680 F.3d 1113, 1118 (9th Cir. 2012). We affirm.

The district court properly dismissed Gaddy's action because Gaddy failed to allege facts sufficient to show that his parole eligibility date was miscalculated. *See Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010) (although pro se pleadings are construed liberally, plaintiff must present factual allegations sufficient to state a plausible claim for relief); *see also* Cal. Penal Code § 1170.1(c) (discussing aggregation of consecutive sentences for in-prison offenses).

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).

Gaddy's pending motions (Docket Entry Nos. 9 and 11) are denied as moot.

AFFIRMED.