

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 16 2021

FOR THE NINTH CIRCUIT

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

ARRON THOMAS SIMMONS,

No. 21-15697

Plaintiff-Appellant,

D.C. No. 2:21-cv-00242-KJM-AC

v.

MEMORANDUM*

SHASTA COUNTY DISTRICT
ATTORNEY; et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of California
Kimberly J. Mueller, District Judge, Presiding

Submitted December 14, 2021**

Before: WALLACE, CLIFTON, and HURWITZ, Circuit Judges.

California state prisoner Arron Thomas Simmons appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action challenging his sentence as unconstitutional. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under 28 U.S.C. § 1915A. *Resnick v. Hayes*, 213 F.3d

* 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).

443, 447 (9th Cir. 2000). We affirm.

The district court properly dismissed Simmons’s action because a challenge to the validity of a state court sentence must be done through habeas corpus, not a § 1983 action. *See Nettles v. Grounds*, 830 F.3d 922, 933 (9th Cir. 2016) (en banc) (“[H]abeas corpus is the exclusive remedy to attack the legality of the conviction or sentence”). The district court also properly determined that Simmons’s complaint was not suitable for conversion into a petition for a writ of habeas corpus because Simmons had not exhausted his state court remedies.

Simmons’s motion for referral (Docket Entry No. 7) is denied.

AFFIRMED.