

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 19 2023

FOR THE NINTH CIRCUIT

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

BENJAMIN FREEMAN,

No. 22-16090

Plaintiff-Appellant,

D.C. No. 4:20-cv-00287-RM

v.

MEMORANDUM\*

DOUGLAS DUCEY; et al.,

Defendants-Appellees.

Appeal from the United States District Court  
for the District of Arizona

Rosemary Márquez, District Judge, Presiding

Submitted September 12, 2023\*\*

Before: CANBY, CALLAHAN, and OWENS, Circuit Judges.

Arizona state prisoner Benjamin Freeman appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging deliberate indifference to his health, safety, and serious medical needs. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion the district court's

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\* 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).

decision regarding appointment of counsel. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009). We affirm.

In his opening brief, Freeman fails to address the district court's basis for granting summary judgment and has therefore waived his challenge to the district court's order. *See Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003) (“[W]e will not consider any claims that were not actually argued in appellant's opening brief.”); *Acosta-Huerta v. Estelle*, 7 F.3d 139, 144 (9th Cir. 1993) (issues not supported by argument in pro se appellant's opening brief are waived).

The district court did not abuse its discretion when it denied Freeman's requests for appointment of counsel because Freeman has not made the requisite showing of exceptional circumstances for the appointment of counsel. *See Palmer*, 560 F.3d at 970.

**AFFIRMED.**