NOT FOR PUBLICATION

FILED

JUL 23 2024

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DAVID A. CROSSETT,

Plaintiff-Appellant,

v.

STATE OF IDAHO; ADA COUNTY SHERIFF'S OFFICE; ASHLEY HAGEMAN-TURNER; DANIEL WILKINS; IDAHO JUDICIAL DEPARTMENT; DERRICK O'NEILL; ADA COUNTY PROSECUTOR'S OFFICE; KATELYN FARLEY; THE COX LAW FIRM, PLLC; JON COX; ELCOX AND SALAZAR; EDWINA ELCOX; KELON WATERS; LUCY JUAREZ; DOES, John/Jane, 1-50,

Defendants-Appellees.

No. 23-35610

D.C. No. 1:23-cv-00389-AKB

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
Amanda K. Brailsford, District Judge, Presiding

Submitted July 16, 2024**

Before: SCHROEDER, VANDYKE, and KOH, Circuit Judges.

* 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).

David A. Crossett appeals pro se from the district court's order dismissing his action alleging federal claims arising from his ongoing state criminal proceeding. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's sua sponte abstention determination under *Younger v. Harris*, 401 U.S. 37 (1971). *Bean v. Matteucci*, 986 F.3d 1128, 1132 (9th Cir. 2021). We affirm.

The district court properly dismissed Crossett's action under the *Younger* abstention doctrine because federal courts are required to abstain from interfering with pending state judicial proceedings where the federal action would have the practical effect of enjoining the state judicial proceeding, and Crossett failed to show that an exception to *Younger* applies. *See Matteucci*, 986 F.3d at 1133 (setting forth requirements for *Younger* abstention); *Baffert v. Cal. Horse Racing Bd.*, 332 F.3d 613, 617, 621 (9th Cir. 2003) (setting forth exceptions to *Younger* abstention; a claimed constitutional violation "does not, by itself, constitute an exception to the application of *Younger* abstention").

The district court did not abuse its discretion by denying leave to amend because amendment would have been futile. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard of review and explaining that leave to amend may be denied when amendment would be futile).

Although the dismissal of Crossett's action was proper, dismissal based on *Younger* abstention is not a determination on the merits and should be without prejudice. *See Canatella v. California*, 404 F.3d 1106, 1113 (9th Cir. 2005); *Beltran v. California*, 871 F.2d 777, 782 (9th Cir. 1989). We affirm the dismissal but instruct the district court to amend the order to reflect that the dismissal is without prejudice.

All pending requests are denied.

AFFIRMED with instructions to amend the dismissal order.