

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 26 2017

FOR THE NINTH CIRCUIT

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

JERRY A. BURTON,

Plaintiff-Appellant,

v.

R. HARRIS, Lieutenant, All being sued in
their Individual Capacities; et al.,

Defendants-Appellees.

No. 15-56506

D.C. No. 2:08-cv-05834-GHK-CW

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
George H. King, District Judge, Presiding

Submitted January 18, 2017**

Before: TROTT, TASHIMA, and CALLAHAN, Circuit Judges.

California state prisoner Jerry A. Burton appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging due process violations relating to his gang validation and placement in the secured housing unit

* 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).

(“SHU”) for an indefinite term. We review de novo a dismissal under Fed. R. Civ. P. 12(b)(6) on the basis of claim preclusion. *Holcombe v. Hosmer*, 477 F.3d 1094, 1097 (9th Cir. 2007). We affirm.

The district court properly dismissed Burton’s action as barred by the doctrine of claim preclusion because the parties or their privies have already litigated Burton’s claims in California state court. *See Furnace v. Giurbino*, 838 F.3d 1019 (9th Cir. 2016) (California habeas petition had claim preclusive effect on subsequent civil litigation because both actions challenged plaintiff’s gang validation and SHU placement); *Gonzales v. Cal. Dep’t of Corr.*, 739 F.3d 1226, 1231 (9th Cir. 2014) (reasoned denials of California habeas petitions have claim preclusive effect).

We do not consider matters not specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Defendants’ request for judicial notice, filed on August 10, 2016, is granted.

AFFIRMED.