

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 5 2017

FOR THE NINTH CIRCUIT

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

ERIC WILTON BURTON,

Plaintiff-Appellant,

v.

R. FOX; et al.,

Defendants-Appellees.

No. 15-56756

D.C. No. 3:15-cv-02458-BAS-JLB

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Cynthia A. Bashant, District Judge, Presiding

Submitted September 26, 2017**

Before: SILVERMAN, TALLMAN, and N.R. SMITH, Circuit Judges.

Eric Wilton Burton, a California state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 for failure to pay the filing fee after denying Burton's motion to proceed in forma pauperis ("IFP") because he had three strikes under the Prison Litigation Reform Act. We have

* 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).

jurisdiction under 28 U.S.C. § 1291. We affirm.

By failing to address in his opening brief how the district court erred, Burton has waived his challenge to the district court's determinations that Burton has three or more prior actions dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted, and that Burton has not alleged imminent danger of serious physical injury. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999) (“[O]n appeal, arguments not raised by a party in its opening brief are deemed waived.”); *Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994) (“We will not manufacture arguments for an appellant, and a bare assertion does not preserve a claim”); *see also* 28 U.S.C. § 1915(g).

AFFIRMED.