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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JAMES EDWARD PROCTOR,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p style="text-align: center;">v.</p> <p>SUSAN M. SPARKE, Law Library Supervisor; et al.,</p> <p style="text-align: center;">Defendants - Appellees.</p>

No. 11-15596

D.C. No. 3:10-cv-00786-RCJ-VPC

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Robert C. Jones, Chief Judge, Presiding

Submitted March 6, 2012**

Before: B. FLETCHER, REINHARDT, and TASHIMA, Circuit Judges.

James Edward Proctor, a Nevada state prisoner, appeals pro se from the district court’s judgment dismissing his 42 U.S.C. § 1983 action alleging interference with his access to the courts. We have jurisdiction under 28 U.S.C.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

§ 1291. We review de novo a dismissal under 28 U.S.C. § 1915(e)(2). *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (order). We vacate and remand.

The district court ruled that Proctor could not state an access-to-courts claim because “an inmate does not have a constitutional right of access to the courts to appeal a denial of a *habeas* petition.” Recently, in *Silva v. Di Vittorio*, 658 F.3d 1090 (9th Cir. 2011), we held “that prisoners have a right under the First and Fourteenth Amendments to litigate claims challenging their sentences or the conditions of their confinement to conclusion without *active interference* by prison officials.” *Id.* at 1103 (explaining the difference between the “right to assistance” and “interference” analyses for a prisoner’s access-to-courts claim). Because the district court did not have the benefit of *Silva* when it dismissed Proctor’s action, we vacate and remand for further proceedings.

Proctor shall bear his own costs on appeal.

VACATED AND REMANDED.