

DEC 04 2014

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARK ANTHONY JONES,

Plaintiff - Appellant,

v.

EDMUND G. BROWN, Jr., Governor; et
al.,

Defendants - Appellees.

No. 14-15035

D.C. No. 3:13-cv-05172-JSW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Jeffrey S. White, District Judge, Presiding

Submitted November 18, 2014**

Before: LEAVY, FISHER, and N.R. SMITH, Circuit Judges.

California state prisoner Mark Anthony Jones appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging that Jones is eligible for re-sentencing under Proposition 36 and that Cal. Penal Code

* 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).

§ 1170.126 is unconstitutional. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under 28 U.S.C. § 1915A, *Hamilton v. Brown*, 630 F.3d 889, 892 (9th Cir. 2011), and we affirm.

The district court properly dismissed without prejudice Jones' action seeking injunctive and declaratory relief because it challenged the fact and duration of his state criminal sentence. *See Preiser v. Rodriguez*, 411 U.S. 475, 488-89 (1973) (habeas corpus is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release, even though such a claim may come within the literal terms of § 1983).

AFFIRMED.