

OCT 05 2016

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROY WARDEN,

Plaintiff-Appellant,

v.

BOB WALKUP, individually and in his
official capacity as Tucson City Mayor; et
al.,

Defendants-Appellees.

No. 14-16440

D.C. No. 4:13-cv-01067-DCB

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
David C. Bury, District Judge, Presiding

Submitted September 27, 2016**

Before: TASHIMA, SILVERMAN, and M. SMITH, Circuit Judges.

Roy Warden appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging various claims arising from his removal from a public park and arrest at a city council meeting. We have jurisdiction under 28

* 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).

U.S.C. § 1291. We review de novo a dismissal on the basis of claim preclusion. *Stewart v. U.S. Bancorp*, 297 F.3d 953, 956 (9th Cir. 2002). We vacate and remand.

In light of our disposition in *Warden v. Robinson et al.*, No. 14-15803, we vacate the judgment in this action and remand to the district court because there is currently no final judgment on the merits precluding this action. *See Stewart*, 297 F.3d at 956 (stating the requirements for application of claim preclusion, including a final judgment on the merits). We express no opinion on the merits of Warden's claims.

Warden's motion to correct the caption, filed on July 28, 2014, is denied.

The parties shall bear their own costs on appeal.

VACATED and REMANDED.