

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 26 2018

FOR THE NINTH CIRCUIT

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

ROMULO ANTONIO PORTILLO,

No. 18-15300

Plaintiff-Appellant,

D.C. No. 2:17-cv-00394-JAD-
CWH

v.

UNITED STATES OF AMERICA,

MEMORANDUM*

Defendant-Appellee.

Appeal from the United States District Court
for the District of Nevada
Jennifer A. Dorsey, District Judge, Presiding

Submitted October 22, 2018**

Before: SILVERMAN, GRABER, and GOULD, Circuit Judges.

Romulo Antonio Portillo, a former federal prisoner, appeals pro se from the district court's judgment dismissing for lack of subject matter jurisdiction his Federal Tort Claims Act ("FTCA") action arising from an allegedly negligent miscalculation of Portillo's sentence. We have jurisdiction under 28 U.S.C.

* 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).

§ 1291. We review de novo. *Snow-Erlin v. United States*, 470 F.3d 804, 807 (9th Cir. 2006). We affirm.

The district court properly dismissed Portillo’s action for lack of subject matter jurisdiction because the FTCA bars claims against the United States arising out of false imprisonment. *See* 28 U.S.C. § 2680(h) (FTCA waiver does not apply to any claim arising out false imprisonment); *Snow-Erlin*, 470 F.3d at 808-09 (“If the gravamen of [p]laintiff’s complaint is a claim for an excluded tort under § 2680(h), then the claim is barred. . . . Plaintiff cannot sidestep the FTCA’s exclusion of false imprisonment claims by suing for the damage of false imprisonment under the label of negligence.”).

Because we conclude the district court lacked jurisdiction, we do not consider Portillo’s contentions regarding the merits of his claims.

AFFIRMED.