

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 16 2021

FOR THE NINTH CIRCUIT

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

ARRON THOMAS SIMMONS,

No. 21-15697

Plaintiff-Appellant,

D.C. No. 2:21-cv-00242-KJM-AC

v.

MEMORANDUM*

SHASTA COUNTY DISTRICT
ATTORNEY; et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of California
Kimberly J. Mueller, District Judge, Presiding

Submitted December 14, 2021**

Before: WALLACE, CLIFTON, and HURWITZ, Circuit Judges.

California state prisoner Arron Thomas Simmons appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action challenging his sentence as unconstitutional. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under 28 U.S.C. § 1915A. *Resnick v. Hayes*, 213 F.3d

* 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).

443, 447 (9th Cir. 2000). We affirm.

The district court properly dismissed Simmons’s action because a challenge to the validity of a state court sentence must be done through habeas corpus, not a § 1983 action. *See Nettles v. Grounds*, 830 F.3d 922, 933 (9th Cir. 2016) (en banc) (“[H]abeas corpus is the exclusive remedy to attack the legality of the conviction or sentence”). The district court also properly determined that Simmons’s complaint was not suitable for conversion into a petition for a writ of habeas corpus because Simmons had not exhausted his state court remedies.

Simmons’s motion for referral (Docket Entry No. 7) is denied.

AFFIRMED.