

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 25 2022

FOR THE NINTH CIRCUIT

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

DARRYL PUGH,

No. 21-16984

Plaintiff-Appellant,

D.C. No. 3:21-cv-06723-CRB

v.

MEMORANDUM\*

L. ANDERSON, Sergeant; RYAN  
KIMBER, Officer, #1682; VASQUEZ,  
Officer, #2021; TAYLOR, Officer, #2195;  
CONSTANCIO, Officer, #2012; CORSO,  
Officer, #2348; ALVEREZ, Officer;  
LUCHRICH, Doctor; LEO, Nurse; ROY,  
Nurse; SANTA CLARA COUNTY  
DEPARTMENT OF CORRECTIONS,

Defendants-Appellees.

Appeal from the United States District Court  
for the Northern District of California  
Charles R. Breyer, District Judge, Presiding

Submitted November 15, 2022\*\*

Before: CANBY, CALLAHAN, and BADE, Circuit Judges.

Darryl Pugh appeals pro se from the district court's judgment dismissing his

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\* 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).

42 U.S.C. § 1983 action alleging unreasonable search and excessive force claims under the Fourth Amendment. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion a dismissal of an action as duplicative. *Adams v. Cal. Dep't of Health Servs.*, 487 F.3d 684, 688 (9th Cir. 2007), *overruled on other grounds by Taylor v. Sturgell*, 553 U.S. 880 (2008). We affirm.

The district court properly dismissed Pugh's action as duplicative because it is based on the same factual allegations as those in *Pugh v. Santa Clara County Corr. Dep't*, No. 00-cv-01391-VRW. *See Adams*, 487 F.3d at 688-89 (explaining that in determining whether an action is duplicative, courts examine "whether the causes of action and relief sought, as well as the parties or privities to the action, are the same"), *abrogated on other grounds by Taylor v. Sturgell*, 553 U.S. 880, 904 (2008); *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (noting that duplicative complaints can be dismissed as "abusive" under 28 U.S.C. § 1915(e)).

Pugh's motion to appoint counsel (Docket Entry No. 9) is denied.

**AFFIRMED.**