

NOT FOR PUBLICATION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

MOHAMED ABDELKADIR,

No. 21-35843

Plaintiff-Appellant,

D.C. No. 2:20-cv-01725-JCC

v.

MEMORANDUM*

UNITED STATES POSTAL SERVICE; C.J.
MARLEY, Tort Claims Supervisor;
TERRELL T. CARRINGTON,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Washington
John C. Coughenour, District Judge, Presiding

Submitted November 15, 2022**

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

Mohamed Abdelkadir appeals pro se from the district court's judgment dismissing his Federal Tort Claims Act ("FTCA") action alleging federal and state law claims for assault and battery. We have jurisdiction under 28 U.S.C. § 1291.

* 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).

We review de novo a dismissal under Federal Rule of Civil Procedure 12(b)(1). *Warren v. Fox Fam. Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003). We affirm.

The district court properly dismissed Abdelkadir's FTCA claims for lack of subject matter jurisdiction because the FTCA does not waive the United States' sovereign immunity for claims of assault and battery. *See* 28 U.S.C. § 2680(h); *Sheehan v. United States*, 896 F.2d 1168, 1169 (9th Cir.), *modified*, 917 F.2d 424 (9th Cir. 1990) ("Under § 2680(h), the United States retains its immunity from suit for certain enumerated intentional torts.").

The district court did not abuse its discretion in declining to exercise supplemental jurisdiction over Abdelkadir's state law assault and battery claims because the court dismissed Abdelkadir's federal claims. *See* 28 U.S.C. § 1367(c)(3); *Lacey v. Maricopa County*, 693 F.3d 896, 940 (9th Cir. 2012) (*en banc*) (discussing district court's discretion to decline to exercise supplemental jurisdiction).

We reject as meritless Abdelkadir's contentions that the district court was biased against him.

AFFIRMED.