

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 21 2023

FOR THE NINTH CIRCUIT

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

GERALD VAUGHN GWEN, named as
Gerald V. Gwen,

Plaintiff-Appellant,

v.

T. DEGARD, Assistant Deputy Warden; et
al.,

Defendants-Appellees.

No. 22-16744

D.C. No. 2:22-cv-01294-JAT-JFM

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
James A. Teilborg, District Judge, Presiding

Submitted November 14, 2023**

Before: SILVERMAN, WARDLAW, and TALLMAN, Circuit Judges.

Arizona state prisoner Gerald Vaughn Gwen appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging claims under the Eighth and Fourteenth Amendments. 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 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), *abrogated in part on other grounds by Taylor v. Sturgell*, 553 U.S. 880 (2008). We affirm.

The district court did not abuse its discretion in dismissing Gwen's action as duplicative because it is based on the same factual allegations as those in *Gwen v. Core Civic, et al.*, 2:21-cv-02150-JAT-JFM. *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"); *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (duplicative complaints can be dismissed under 28 U.S.C. § 1915(e)). Although the claims Gwen alleged in this action were dismissed without prejudice in his prior action, the district court explained in its order dismissing this action that Gwen could move to amend his complaint in his prior action, which was proceeding at the time this action was dismissed.

We do not consider Gwen's contentions regarding the district court's dismissal of Gwen's claims in his prior action because they are outside the scope of this appeal.

AFFIRMED.