

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 24 2023

FOR THE NINTH CIRCUIT

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

DEROME McELROY,

No. 22-35072

Plaintiff-Appellant,

D.C. No. 3:21-cv-05891-DGE

v.

MEMORANDUM*

AGENCY, Unknown,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Washington
David G. Estudillo, District Judge, Presiding

Submitted February 14, 2023**

Before: FERNANDEZ, FRIEDLAND, and H.A. THOMAS, Circuit Judges.

Derome McElroy appeals pro se from the district court's judgment dismissing his action for lack of subject matter jurisdiction. We have jurisdiction under 28 U.S.C. § 1291. We affirm.

In his opening brief, McElroy fails to address the grounds for dismissal and

* 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).

has therefore waived his challenge to the district court's judgment. *See Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003) (“[W]e will not consider any claims that were not actually argued in appellant’s opening brief.”); *Acosta-Huerta v. Estelle*, 7 F.3d 139, 144 (9th Cir. 1993) (issues not supported by argument in pro se appellant’s opening brief are waived).

The district court did not abuse its discretion in denying McElroy’s request for appointment of counsel because McElroy did not demonstrate that appointment of counsel was justified. *See Harrington v. Scribner*, 785 F.3d 1299, 1309 (9th Cir. 2015) (setting forth standard of review and requirements for appointment of counsel in a civil action).

We do not consider arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

McElroy’s motion to appoint counsel (Docket Entry No. 3) is denied.

AFFIRMED.