

JAN 14 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BENJAMIN ADAMS,

Plaintiff - Appellant,

v.

FISHER,

Defendant - Appellee,

and

TERESA A. SCHWARTZ; et al.,

Defendants.

No. 07-15398

D.C. No. CV-04-00694-DFL/KJM

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
David F. Levi, District Judge, Presiding

Submitted December 17, 2008**

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: GOODWIN, WALLACE, and RYMER, Circuit Judges.

Benjamin Adams, a former California state prisoner, appeals pro se from the district court's summary judgment in favor of defendant in his 42 U.S.C. § 1983 action alleging deliberate indifference to his serious medical needs. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004), and we affirm.

The district court properly granted summary judgment because Adams failed to raise a genuine issue of material fact as to whether defendant acted with deliberate indifference by changing Adams's insulin schedule. *See id.* at 1057 (explaining that prison officials must know of and disregard an excessive risk of harm for their conduct to constitute deliberate indifference).

AFFIRMED.