

JAN 23 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JEFFERS PATRICK DICKEY,  
  
Plaintiff - Appellant,  
  
v.  
  
MARK CHURRAY,  
  
Defendant - Appellee.

No. 07-16952

D.C. No. CV-03-02215-ALA

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Arthur L. Alarcón, Senior Circuit Judge, Presiding

Submitted January 13, 2009\*\*

Before: O'SCANNLAIN, BYBEE, and CALLAHAN, Circuit Judges.

Jeffers Patrick Dickey appeals from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging that a prison guard was deliberately indifferent to his health and safety when two inmates attacked him on the prison

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

recreational yard. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a grant of summary judgment, *Fair Hous. Council v. Riverside Two*, 249 F.3d 1132, 1135 (9th Cir. 2001), and we affirm.

The district court properly granted summary judgment on Dickey's deliberate indifference claim because Dickey failed to raise a triable issue of material fact as to whether the guard knew of and disregarded an excessive risk to Dickey's health or safety. *See Clement v. Gomez*, 298 F.3d 898, 904 (9th Cir. 2002) (describing subjective and objective requirements for showing of deliberate indifference). Particularly given the speed with which the attack took place, the officer's failure to protect Dickey from serious injury is not an indication of deliberate indifference.

**AFFIRMED.**