

JAN 23 2009

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

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROMAN MCCARTHY,

Plaintiff - Appellant,

v.

MIKE WICK,

Defendant - Appellee.

No. 07-35805

D.C. No. CV-04-00072-MBU

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Carolyn S. Ostby, Magistrate Judge, Presiding**

Submitted January 13, 2009***

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

Roman McCarthy, a Montana state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action for failure to exhaust

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

** The parties consented to the jurisdiction of the magistrate judge.

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

administrative remedies pursuant to 42 U.S.C. § 1997e(a). We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo a district court's order dismissing for failure to exhaust administrative remedies, *Wyatt v. Terhune*, 315 F.3d 1108, 1117 (9th Cir. 2003), and we affirm.

The district court properly dismissed the action because McCarthy did not complete the prison grievance process prior to filing suit. *See Woodford v. Ngo*, 548 U.S. 81, 85, 90 (2008) (holding that proper exhaustion under § 1997e(a) is mandatory and requires compliance with the administrative grievance system's procedural rules).

We deny McCarthy's motion for appointment of counsel on appeal. *See Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991) (requiring "exceptional circumstances" for the appointment of counsel).

McCarthy's remaining contentions are unpersuasive.

AFFIRMED.