

FEB 26 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>FRANCIS W. DAVIS,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p>v.</p> <p>CALIFORNIA DEPARTMENT OF CORRECTIONS; et al.,</p> <p style="text-align: center;">Defendants - Appellees.</p>
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No. 06-16991

D.C. No. CV-05-00908-AWI

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Anthony W. Ishii, Chief Judge, Presiding

Submitted February 18, 2009**

Before: BEEZER, FERNANDEZ and W. FLETCHER, Circuit Judges.

Francis W. Davis, a California 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 panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

administrative remedies as required by the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a). We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo, *Wyatt v. Terhune*, 315 F.3d 1108, 1117 (9th Cir. 2003), and we affirm.

The district court properly dismissed the action because Davis did not properly exhaust prison grievance procedures prior to filing suit in federal court. *See Woodford v. Ngo*, 548 U.S. 81, 93-95 (2006) (holding that “proper exhaustion” requires adherence to administrative procedural rules).

We will not consider Davis’s contention that a prison official allegedly informed him that he could not forward his appeal to the next level once it had been cancelled because the contention is raised for the first time on appeal. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999) (explaining that, as a general rule, the court will not consider arguments that are raised for the first time on appeal).

Davis’s remaining contentions are unpersuasive.

AFFIRMED.