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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ROBERT J. MCCULLOCK,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>LOS ANGELES COUNTY SHERIFF,</p> <p>Defendant - Appellee.</p>

No. 07-55871

D.C. No. CV-05-05064-PSG

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Philip S. Gutierrez, District Judge, Presiding

Submitted March 18, 2009**

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Robert J. McCulloch, a former California pretrial detainee, appeals pro se from the district court’s summary judgment in his 42 U.S.C. § 1983 action alleging that the defendant acted with deliberate indifference to his medical needs. We

* 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).

have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo. *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998). We affirm.

The district court properly granted summary judgment on McCulloch's deliberate indifference claim because there was no genuine issue of material fact as to whether he suffered any harm. *See McGuckin v. Smith*, 974 F.2d 1050, 1060 (9th Cir. 1992) (“[A] prisoner can make no claim for deliberate medical indifference unless the denial was harmful.”) (internal quotations omitted), *rev'd on other grounds, WMX Tech., Inc. v. Miller*, 104 F.2d 1133 (9th Cir. 1997); *see also Frost*, 152 F.3d at 1124 (explaining that because a pretrial detainee's rights under the Fourteenth Amendment are comparable to a prisoner's rights under the Eighth Amendment, the same standards apply). The district court also properly concluded that there was no triable issue regarding Sheriff Baca's personal involvement in the alleged constitutional violation. *See Taylor v. List*, 880 F.2d 1040, 1245 (9th Cir. 1989) (“There is no respondeat superior liability under section 1983.”)

AFFIRMED.