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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>TONY PENN,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p style="text-align: center;">v.</p> <p>DAVID, C.O.; et al.,</p> <p style="text-align: center;">Defendant - Appellee.</p>
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No. 07-15376

D.C. No. CV-06-00662-AWI

MEMORANDUM *

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

Submitted April 13, 2009**

Before: GRABER, GOULD, and BEA, Circuit Judges.

Tony Penn, a California state prisoner, appeals pro se from the district court's judgment dismissing without prejudice his 42 U.S.C. § 1983 action for failure to exhaust administrative remedies pursuant to the Prison Litigation Reform

* 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).

Act, 42 U.S.C. § 1997e(a). We have jurisdiction under 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 Penn did not properly exhaust prison grievance procedures prior to filing suit in federal court. *See McKinney v. Carey*, 311 F.3d 1198, 1199 (9th Cir. 2002) (per curiam) (holding that exhaustion under § 1997e(a) must occur prior to commencement of the action); *see also Wyatt*, 315 F.3d at 1120 (“A prisoner’s concession to nonexhaustion is a valid grounds for dismissal.”).

We do not consider Penn’s remaining contentions because they do not address the basis of the district court’s ruling.

AFFIRMED.