

APR 28 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARTHUR DUANE JACKSON,

Plaintiff - Appellant,

v.

J. P. GONZALEZ, Associate Warden; et
al.,

Defendants - Appellees.

No. 08-55774

D.C. No. 3:05-cv-00513-L-NLS

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
M. James Lorenz, District Judge, Presiding

Submitted April 13, 2009**

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

Arthur Duane Jackson, a California state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging denial of

* 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).

access to the courts. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's order granting summary judgment. *Midwater Trawlers Coop. v. Dep't of Commerce*, 393 F.3d 994, 1002 (9th Cir. 2004). We affirm.

The district court properly granted summary judgment because Jackson failed to raise a genuine issue of material fact as to whether he suffered an actual injury as a result of defendants' conduct. *See Lewis v. Casey*, 518 U.S. 343, 348-49 (1996) (explaining that "actual injury" is "actual prejudice with respect to contemplated or existing litigation, such as the inability to meet a filing deadline or to present a claim") (citation and internal quotation marks omitted). Moreover, defendants' delay in providing Jackson with access to his legal materials was "not of constitutional significance" because it was the "product of prison regulations reasonably related to legitimate penological interests." *Id.* at 362.

The district court did not abuse its discretion by denying Jackson's motion for appointment of counsel because he did not demonstrate any "exceptional circumstances" in this case. *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991).

The district court did not abuse its discretion by denying Jackson's request that the court finance his deposition costs because, "[a]lthough the plain language of section 1915 provides for service of process for an indigent's witnesses, it does

not waive payment of fees or expenses for those witnesses.” *Tedder v. Odel*, 890 F.2d 210, 211 (9th Cir. 1989) (per curiam).

The district court did not abuse its discretion by denying Jackson’s request for Rule 11 sanctions because the court found no improper conduct on the part of defendants, and that finding is not “clearly erroneous.” *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1127 (9th Cir. 2002).

Jackson’s remaining contentions are unpersuasive.

AFFIRMED.