

JUL 06 2009

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>LARRY DONNELL KING,</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>
--

No. 07-16724

D.C. No. CV-03-06182-AWI/DLB

MEMORANDUM*

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

Submitted June 16, 2009**

Before: PAEZ, TALLMAN, and N.R. SMITH, Circuit Judges.

Larry Donnell King, a California state prisoner, appeals pro se from the district court's judgment dismissing without prejudice his 42 U.S.C. § 1983 action

* 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).

for failure to exhaust administrative remedies pursuant to the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a). We have jurisdiction under 28 U.S.C. § 1291. We review the district court's application of substantive law de novo and its factual determinations for clear error. *Wyatt v. Terhune*, 315 F.3d 1108, 1117 (9th Cir. 2003). We may affirm on any basis supported by the record, *Vestar Dev. II, LLC v. Gen. Dynamics Corp.*, 249 F.3d 958, 960 (9th Cir. 2001), and we affirm.

The record shows that King filed suit prior to completing the prison grievance process; therefore the district court properly dismissed the action. *See McKinney v. Carey*, 311 F.3d 1198, 1200-1201 (9th Cir. 2002) (per curiam) (affirming dismissal of prisoner's civil rights action for failure to complete administrative remedies prior to filing suit).

We deny King's request for judicial notice. *See Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1025 n. 2 (9th Cir. 2006) (declining to take judicial notice of documents that were not relevant to the resolution of the appeal).

King's remaining contentions are unpersuasive.

AFFIRMED.