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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>BARTH D. CAPELA,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p>v.</p> <p>D.K. SISTO, Warden, Solano Prison; et al.,</p> <p style="text-align: center;">Defendants - Appellees.</p>
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No. 08-16392

D.C. No. 2:08-cv-00134-FCD-
GGH

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Frank C. Damrell, Jr., District Judge, Presiding

Submitted June 16, 2009**

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

Barth D. Capela, a California state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging that prison

* 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).

officials violated his equal protection rights by awarding more “worktime credits” to inmates assigned to work in the conservation camp under Cal. Penal Code § 2933.3. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo a dismissal under 28 U.S.C. § 1915A. *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (order). We affirm.

The district court properly dismissed the action because the complaint did not allege facts suggesting that Capela was similarly situated to inmates with conservation camp work assignments. *See Thornton v. City of St. Helens*, 425 F.3d 1158, 1168 (9th Cir. 2005) (“[D]ifferent treatment of unlike groups does not support an equal protection claim.”); *see also Kalka v. Vasquez*, 867 F.2d 546, 547 (9th Cir. 1989) (rejecting an equal protection claim based challenge to Cal. Penal Code § 2933.3).

Capela’s remaining contentions are unpersuasive.

AFFIRMED.