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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANDRE B. YOUNG,

Plaintiff - Appellant,

v.

STATE OF WASHINGTON; et al.,

Defendants - Appellees.

No. 04-35958

D.C. No. CV-98-05351-RJB

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Robert J. Bryan, District Judge, Presiding

Submitted June 16, 2009**

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

Andre B. Young, a civil detainee, appeals pro se from the district court's summary judgment for Washington State defendants in 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).

alleging he was denied telephone communication with his family for a number of months while he was held on prison grounds. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review summary judgment de novo, *Valdez v. Rosenbaum*, 302 F.3d 1039, 1043 (9th Cir. 2002), and we affirm.

The district court properly granted summary judgment on Young's First Amendment claim because Young's sham affidavit contradicted his prior deposition testimony and therefore could not be used to defeat the motion for summary judgment. *See Radobenko v. Automated Equip. Corp.*, 520 F.2d 540, 543-44 (9th Cir. 1975) (concluding that a sham affidavit that flatly contradicted earlier testimony could not be used to create a disputed issue of fact and avoid summary judgment).

There was no triable issue as to whether Young had telephone access during the period at issue, or communicated with various members of his family.

Young's remaining contentions lack merit.

AFFIRMED.