

JUL 27 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SHAWN SHUMATE,

Plaintiff - Appellant,

v.

DON MILLS, Superintendent, Eastern
Oregon Correctional Institution, Oregon
Department of Corrections; et al.,

Defendants - Appellees.

No. 08-35883

D.C. No. 3:07-cv-01175-KI

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Garr M. King, District Judge, Presiding

Submitted July 14, 2009**

Before: SCHROEDER, THOMAS, and WARDLAW, Circuit Judges.

Shawn Shumate, an Oregon state prisoner, appeals pro se from the district

* 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).

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 Act, 42 U.S.C. § 1997e(a). We have jurisdiction under 28 U.S.C. § 1291. We review the district court's factual determinations for clear error, *Wyatt v. Terhune*, 315 F.3d 1108, 1117 (9th Cir. 2003), and we affirm.

The district court properly dismissed the action because Shumate did not complete the prison grievance process prior to filing suit, and failed to demonstrate that he was obstructed from doing so. *See Woodford v. Ngo*, 548 U.S. 81, 93-95 (2006) (holding that "proper exhaustion" under § 1997e(a) is mandatory and requires adherence to administrative procedural rules).

Shumate's remaining contentions are unpersuasive.

AFFIRMED.