

OCT 23 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>EDWARD L. TURNER,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>J. SULLIVAN; et al.,</p> <p>Defendants - Appellees.</p>

No. 07-16885

D.C. No. CV-05-01288-LJO

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O’Neill, District Judge, Presiding

Submitted October 13, 2009**

Before: B. FLETCHER, LEAVY, and RYMER, Circuit Judges.

Edward L. Turner, a California state prisoner, appeals pro se from the district court’s judgment dismissing his 42 U.S.C. § 1983 action for failure to exhaust administrative remedies pursuant to the Prison Litigation Reform Act, 42

* 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).

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

The district court properly dismissed the action because Turner did not complete the administrative appeals process in accordance with the administrative procedural rules, and failed to demonstrate that he was excused or obstructed from doing so. *See Woodford v. Ngo*, 548 U.S. 81, 90-91 (2006) (explaining that “proper exhaustion” under § 1997e(a) requires inmates to complete “all steps that the agency holds out” and to follow administrative procedural rules); *see also* Cal. Code Regs. tit. 15, § 3084.5(d).

We will not consider arguments or documents presented for the first time on appeal. *Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999) (“[A]n appellate court will not consider issues not properly raised before the district court.”); *United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990) (explaining that documents not presented to the district court are not part of the record on appeal).

AFFIRMED.