

DEC 08 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DONALD JEROME GREEN,

Plaintiff - Appellant,

v.

M. SHARP,

Defendant - Appellee.

No. 08-16663

D.C. No. 2:06-cv-02107-FCD-
GGH

MEMORANDUM*

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

Submitted November 17, 2009**

Before: ALARCÓN, TROTT, and TASHIMA, Circuit Judges.

Donald Jerome Green, a California state prisoner, appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging that a prison guard violated his Eighth Amendment rights by failing to protect him from

* 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).

another inmate. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo. *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004). We affirm.

The district court properly granted summary judgment because Green did not raise a triable issue as to whether the prison guard knew that inmate Frazier posed a substantial risk of serious harm to Green. *See Farmer v. Brennan*, 511 U.S. 825, 837-39 (1994) (holding that a prison official cannot be found liable for deliberate indifference unless the official knows of and disregards an excessive risk to inmate health or safety).

Green's remaining contentions are unpersuasive.

AFFIRMED.