

DEC 14 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>BRIAN KEITH LOEHR,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p style="text-align: center;">v.</p> <p>STATE OF NEVADA; et al.,</p> <p style="text-align: center;">Defendants - Appellees.</p>
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No. 06-15633

D.C. No. CV-04-00409-
ECR/RAM

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Edward C. Reed, Jr., District Judge, Presiding

Submitted November 17, 2009**

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

Brian Keith Loehr, a Nevada state prisoner, appeals pro se from the district court's summary judgment for defendants in his 42 U.S.C. § 1983 action alleging

* 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).

that his First and Fourteenth Amendment rights were violated by defendants' restrictions on his receipt of *Hustler* magazine. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Bahrampour v. Lampert*, 356 F.3d 969, 973 (9th Cir. 2004). We affirm.

The district court properly granted summary judgment on Loehr's First Amendment claim because Loehr failed to raise a genuine issue of material fact that regulations prohibiting sexually explicit material were not reasonably related to legitimate penological interests. *See Mauro v. Arpaio*, 188 F.3d 1054, 1058-63 (9th Cir. 1999) (en banc) (upholding a ban on sexually explicit materials depicting frontal nudity).

The district court properly granted summary judgment on Loehr's procedural due process claim because Loehr failed to raise a genuine issue of material fact as to whether he was given notice of the withholding and the right to appeal to a prison official other than the one who made the initial decision to withhold the magazine. *See Krug v. Lutz*, 329 F.3d 692, 696-98 (9th Cir. 2003).

AFFIRMED.