

DEC 14 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NICOLAS MORAN,

Plaintiff - Appellant,

v.

M. LEVIN, Medical Doctor; et al.,

Defendants - Appellees.

No. 08-55799

D.C. No. 3:07-cv-01020-JM-POR

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Jeffrey T. Miller, District Judge, Presiding

Submitted November 17, 2009**

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

Nicolas Moran, a California state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action under 28 U.S.C.

* 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).

§§ 1915(e)(2) and 1915A for failure to state a claim. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's dismissal under 28 U.S.C. § 1915(e)(2), *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (order), and 28 U.S.C. § 1915A, *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). We affirm.

The district court properly dismissed Moran's deliberate indifference claims because the allegations set forth in his second amended complaint and the attachments thereto state, at most, a claim for malpractice or negligence. *See Toguchi v. Chung*, 391 F.3d 1051, 1060 (9th Cir. 2004) ("A showing of medical malpractice or negligence is insufficient to establish a constitutional deprivation under the Eighth Amendment."). Moreover, a difference in opinion between Moran and the prison physicians about the preferred course of medical treatment does not constitute an Eighth Amendment violation. *See id.* at 1058. Finally, as to defendant Athannassious, Moran failed to allege facts to show the sufficiently culpable state of mind that is required to establish deliberate indifference. *See Farmer v. Brennan*, 511 U.S. 825, 834 (1994).

Moran's remaining contentions are unpersuasive.

AFFIRMED.