

DEC 29 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KEITH L. NASH,

Plaintiff - Appellant,

v.

DOUG WADDINGTON; et al.,

Defendants - Appellees.

No. 08-35281

D.C. No. 3:06-cv-05127-RJB

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Robert J. Bryan, District Judge, Presiding

Submitted December 15, 2009**

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Keith L. Nash, a former prisoner in Washington, appeals pro se from the district court's summary judgment for defendants in his 42 U.S.C. § 1983 action alleging First Amendment violations. We have jurisdiction pursuant to 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 concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

§ 1291. We review de novo, *Sorreles v. McKee*, 290 F.3d 965, 969 (9th Cir. 2002), and we affirm in part and dismiss in part.

The district court properly granted summary judgment on Nash’s “access to the courts” claims because Nash failed to show that he suffered an actual injury as a result of the defendants’ conduct. *See Lewis v. Casey*, 518 U.S. 343, 351 (1996).

The district court properly granted summary judgment on Nash’s retaliation claim because Nash failed to raise a triable issue as to whether defendants enforced prison rules in retaliation for Nash engaging in protected conduct. *See Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005).

Nash’s remaining contentions are unpersuasive.

Because Nash filed his motion for reconsideration more than ten days after judgment entered, and did not file a separate notice of appeal as to the order denying this motion, we lack jurisdiction to consider his appeal of the order. *See Fed. R. App. P. 4(a)*. Accordingly, we dismiss Nash’s appeal from that order.

AFFIRMED in part and DISMISSED in part.