

JAN 22 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>DAVID KING,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p style="text-align: center;">v.</p> <p>T. M. PEBLER,</p> <p style="text-align: center;">Defendant - Appellee.</p>
--

No. 08-17527

D.C. No. 2:07-CV-02787-FCD-CMK

MEMORANDUM*

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

Submitted January 11, 2010**

Before: BEEZER, TROTT, and BYBEE, Circuit Judges.

David King, a California state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging that a prison

* 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).

guard violated the Equal Protection Clause of the Fourteenth Amendment by directing him to cut his hair. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Sacks v. Office of Foreign Assets Control*, 466 F.3d 764, 770 (9th Cir. 2006). We may affirm on any basis supported by the record. *Dittman v. California*, 191 F.3d 1020, 1027 n.3 (9th Cir. 1999). We affirm.

The district court properly dismissed King's equal protection claim because he failed to allege facts showing that he was treated differently from other inmates who were similarly situated and that there was no rational basis for the difference in treatment. *See Thornton v. City of St. Helens*, 425 F.3d 1158, 1167-68 (9th Cir. 2005) (stating that different treatment of unlike individuals does not support an equal protection claim).

We have carefully considered King's remaining contentions and conclude they are unpersuasive.

AFFIRMED.