

MAR 08 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NEHEMIAH ROBINSON,  
  
Plaintiff - Appellant,  
  
v.  
  
M. PENNER; et al.,  
  
Defendants - Appellees.

No. 08-16604

D.C. No. 2:05-cv-01499-LKK-  
CMK

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Lawrence K. Karlton, District Judge, Presiding

Submitted February 16, 2010\*\*

Before: FERNANDEZ, GOULD, and M. SMITH, Circuit Judges.

Nehemiah Robinson, a California state prisoner, appeals pro se from the district court's summary judgment for defendants in his 42 U.S.C. § 1983 action

---

\* 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 is case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

alleging deliberate indifference to his medical needs. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004), and we affirm.

The district court properly granted summary judgment to defendants because Robinson failed to raise a genuine issue of material fact as to whether the treatment for his arthritis “was medically unacceptable under the circumstances and was chosen in conscious disregard of an excessive risk to [his] health.” *Id.* at 1058 (explaining that a difference of medical opinion is insufficient, as a matter of law, to establish deliberate indifference) (citation and internal quotation omitted).

Robinson’s remaining contentions are unpersuasive.

**AFFIRMED.**