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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JEFFREY A. PATE,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>MARTIN GARCIA,</p> <p>Defendant - Appellee.</p>
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No. 08-17228

D.C. No. 2:04-cv-01201-FCD-DAD

MEMORANDUM\*

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

Submitted February 16, 2010\*\*

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

California state prisoner Jeffrey A. Pate appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging deliberate

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

indifference to his safety while he was a pretrial detainee at the Sacramento County Main Jail. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo. *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004). We affirm.

The district court properly granted summary judgment because the uncontroverted evidence showed that Garcia had no control over Pate's placement in the housing unit in which Pate was attacked, nor was there evidence that Garcia knew of the risk to Pate's safety before the attack. *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994) (“[A] prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety . . . .”); *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988) (providing that an official can be liable under § 1983 only “if he does an affirmative act, participates in another's affirmative acts, or omits to perform an act which he is legally required to do that causes the deprivation” at hand (citation omitted)).

Pate's remaining contentions are unpersuasive.

All pending motions are denied.

**AFFIRMED.**