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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SY LEE CASTLE,

Plaintiff - Appellant,

v.

GEORGE PARKINSON; et al.,

Defendants - Appellees.

No. 08-15341

D.C. No. CV-01-20187-JW

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
James Ware, District Judge, Presiding

Submitted March 16, 2010\*\*

Before: SCHROEDER, PREGERSON, and RAWLINSON, Circuit Judges.

Sy Lee Castle, a California state prisoner, appeals *pro se* from the district court's summary judgment in his 42 U.S.C. § 1983 action claiming deliberate indifference to serious medical needs. We have jurisdiction under 28 U.S.C.

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\* 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 for abuse of discretion the district court's decision regarding appointment of counsel. *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). We review de novo the district court's summary judgment. *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004). We affirm.

The district court did not abuse its discretion when it denied Castle's request for appointment of counsel because Castle did not demonstrate that exceptional circumstances existed. *See Terrell*, 935 F.2d at 1017.

The district court properly granted summary judgment on the claims against Dr. George Parkinson because Castle failed to raise a triable issue as to whether Parkinson knew of and disregarded an excessive risk to Castle's health, as required by *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). Rather, various medical reports, physicians' progress notes, and other undisputed evidence showed that Castle received continuous medical care and numerous accommodations from Parkinson and others during the relevant period. The district court also properly granted summary judgment on the claims against Dr. Paul Pavlovic because Castle failed to raise a triable issue that Pavlovic was deliberately indifferent when he reviewed one of Castle's administrative appeals related to his request for additional physical therapy. At most, Castle established that he disagreed with his physicians, and that there was a difference of opinion among some of his treating physicians, as to his

need for further physical or other therapy. However, such differences of opinion do not amount to deliberate indifference. *See Toguchi*, 391 F.3d at 1058.

Castle's motion for leave to file an oversized reply brief is granted. The Clerk is instructed to file the brief received on October 6, 2008.

**AFFIRMED.**