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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>FRED LEON JACKSON, Jr.,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>R. ROWLETT, Correctional Sgt.; et al.,</p> <p>Defendants - Appellees.</p>

No. 08-15514

D.C. No. 05-CV-02498-MCE

MEMORANDUM *

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

Submitted March 16, 2010 **

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

Fred Leon Jackson, Jr., a California state prisoner, appeals pro se from the district court’s summary judgment for defendants in his 42 U.S.C. § 1983 action alleging that defendants conspired to discipline him in retaliation for filing a

* 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).

grievance. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Sorrels v. McKee*, 290 F.3d 965, 969 (9th Cir. 2002). We may affirm on any grounds supported by the record. *ACLU of Nev. v. City of Las Vegas*, 333 F.3d 1092, 1097 (9th Cir. 2003). We affirm.

The district court did not abuse its discretion by dismissing Jackson's action as against Correctional Sergeant Rowlett because Rowlett was not served before his death and his estate was not served. *See Puett v. Blandford*, 912 F.2d 270, 273 (9th Cir. 1990) (setting forth standard of review).

The district court properly granted summary judgment on Jackson's retaliation claim because Jackson failed to raise a genuine issue of material fact as to whether defendants were aware of Jackson's grievance complaining of conduct by Rowlett when they disciplined him. *See Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005) (listing elements of a retaliation claim).

AFFIRMED.