

APR 01 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JUAN A. PORTILLO,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>DAVE S. KHATRI; et al.,</p> <p>Defendants - Appellees.</p>

No. 09-55255

D.C. No. 3:06-CV-02760-BTM-
CAB

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Barry Ted Moskowitz, District Judge, Presiding

Submitted March 16, 2010**

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

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

* 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 serious medical needs. 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 Portillo did not raise a genuine issue of material fact as to whether the defendants knew of and disregarded an excessive risk to Portillo while treating his kidney stones. *See id.* at 1057–58 (holding that a prison official acts with deliberate indifference only if he knows of and disregards an excessive risk to an inmate’s health and safety, and a difference of opinion about the best course of medical treatment does not amount to deliberate indifference).

Portillo’s remaining contentions are unpersuasive.

AFFIRMED.