

JUN 01 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JEFFERY KELCE,

Plaintiff - Appellant,

v.

S. CERVANTES, Appeals Coordinator; et  
al.,

Defendants - Appellees.

No. 04-15601

D.C. No. CV-01-02350-DFL/JFM

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
David F. Levi, District Judge, Presiding

Argued and Submitted November 6, 2009  
San Francisco, California

Before: HAWKINS and THOMAS, Circuit Judges, and KORMAN,\*\* District  
Judge.

Jeffrey Kelce, a former California state prisoner, appeals the district court's  
judgment dismissing his action under 42 U.S.C. § 1983. Kelce alleged that

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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 Honorable Edward R. Korman, United States District Judge for  
the Eastern District of New York, sitting by designation.

defendants violated his constitutional rights by denying him access to the courts and depriving him of his property. Kelce also challenged certain regulations governing the California state prison grievance process as unconstitutional.

The parties on appeal agreed that Kelce had unexhausted remedies for his claims under the California Tort Claims Act, Cal. Gov't Code §§ 900 *et seq.* In view of the posture of the case, we remand the case to the district court with directions to hold this action in abeyance while Kelce pursues his remedies under the California Tort Claims Act. After the resolution of those claims, the district court shall conduct any further appropriate proceedings to determine any remaining issues in this case.

We need not, and do not, reach any other issue urged by the parties on appeal.

**REMANDED.**