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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ROBERT L. FINLEY,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>DWIGHT NEVEN, Warden; et al.,</p> <p>Defendants - Appellees.</p>
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No. 09-16258

D.C. No. 2:06-CV-01086-RLH-LRL

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Roger L. Hunt, Chief Judge, Presiding

Submitted June 29, 2010**

Before: ALARCÓN, LEAVY, and GRABER, Circuit Judges.

Robert L. Finley, a former Nevada state prisoner, appeals pro se from the district court’s judgment dismissing his 42 U.S.C. § 1983 action implicating the Eighth Amendment and alleging that defendants deprived him of a mattress. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court’s

* 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).

decision regarding qualified immunity. *Ramirez v. City of Buena Park*, 560 F.3d 1012, 1019 (9th Cir. 2009). We affirm.

The district court properly concluded that defendants were entitled to qualified immunity because prisoners do not have a clearly established right to sleep on a comfortable mattress. *See Rhodes v. Chapman*, 452 U.S. 337, 347 (1981) (“[C]onditions that cannot be said to be cruel and unusual under contemporary standards are not unconstitutional. To the extent that such conditions are restrictive and even harsh, they are part of the penalty that criminal offenders pay for their offenses against society.”); *Hernandez v. Denton*, 861 F.2d 1421, 1424 (9th Cir. 1988) (a short term deprivation of a mattress is insufficient to state an Eighth Amendment violation), *judgment vacated on other grounds*, 493 U.S. 801 (1989). The record reflects that during the time period when Finley alleges he did not have a mattress, defendants provided him with an “alternative mattress,” consisting of three wool blankets.

Finley’s remaining contentions are unpersuasive.

AFFIRMED.