

AUG 02 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN F. AUSLER,

Plaintiff - Appellant,

v.

JAMES ROLLINS and PAMELA  
PRUITT,

Defendants - Appellees.

No. 08-35649

D.C. No. 2:06-cv-05082-JPH

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of Washington  
Edward F. Shea, District Judge, Presiding

Submitted July 19, 2010\*\*

Before: B. FLETCHER, REINHARDT, and WARDLAW, Circuit Judges.

John F. Ausler, a Washington state prisoner, appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging denial of access

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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).

to courts. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Oliver v. Keller*, 289 F.3d 623, 626 (9th Cir. 2002), and we affirm.

The district court properly granted summary judgment on Ausler's denial of access to courts claim because Ausler failed to identify any actual injury he suffered as a result of the alleged delay by prison officials in providing him with the modified judgment and sentence. *See Lewis v. Casey*, 518 U.S. 343, 351-55 (1996) (to show actual injury, a prisoner must demonstrate that he was thwarted in his pursuit of a nonfrivolous claim concerning his conviction or conditions of confinement).

The district court did not abuse its discretion when it denied Ausler's motions for appointment of counsel because he failed to establish exceptional circumstances. *See Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

Ausler's remaining contentions are not persuasive.

**AFFIRMED.**