

OCT 29 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>LEMUEL FRED HENTZ,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p style="text-align: center;">v.</p> <p>PAM J. CENIGA, et al.,</p> <p style="text-align: center;">Defendants - Appellees.</p>
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No. 09-35249

D.C. No. 3:08-cv-00157-MO

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Michael W. Mosman, District Judge, Presiding

Submitted October 19, 2010**

Before: O’SCANNLAIN, TALLMAN, and BEA, Circuit Judges.

Oregon state prisoner Lemuel Fred Hentz appeals pro se from the district court’s orders denying his summary judgment motion and granting defendants’ cross-motion for summary judgment in his 42 U.S.C. § 1983 action asserting various constitutional claims. We have jurisdiction under 28 U.S.C. § 1291. We

* 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).

review de novo, *FTC v. Stefanich*, 559 F.3d 924, 927 (9th Cir. 2009), and we affirm.

The district court properly granted summary judgment on Hentz's claims on qualified immunity grounds because he failed to raise a triable issue that defendants violated any of his constitutional rights. *See Pearson v. Callahan*, 129 S. Ct. 808, 817-18 (2009) (discussing qualified immunity analysis).

Hentz failed to allege the elements necessary for his Fourth, Fifth, and Eighth Amendment claims. *See Hudson v. Palmer*, 468 U.S. 517, 536 (1984) (Fourth Amendment has no applicability to a prison cell); *Bingue v. Prunchak*, 512 F.3d 1169, 1174 (9th Cir. 2008) (Fifth Amendment's Due Process Clause only applies to federal, not state, actors); *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir. 2006) (listing elements of Eighth Amendment deliberate indifference claim); *Barren v. Harrington*, 152 F.3d 1193, 1194-95 (9th Cir. 1998) (order) (listing elements of equal protection claim); *Taylor v. List*, 880 F.2d 1040, 1045-46 (9th Cir. 1989) (conclusory allegations insufficient to defeat summary judgment).

_____ Hentz's conclusory allegations of retaliation and the absence of evidence that defendants seized his books or photos due to their content were insufficient to establish a triable issue as to his retaliation claim. *Cf. Thornburgh v. Abbott*, 490 U.S. 401, 415-16 (1989) (analyzing whether rules governing access to materials are

content-based or not for inmates' First-Amendment claim); *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005) (discussing elements of retaliation claim); *Taylor*, 880 F.2d at 1045 (conclusory allegations of retaliation insufficient).

Finally, Hentz's Fourteenth Amendment claim failed because he was not entitled to a hearing before seizure of contraband items or funds implicated in misconduct; was provided a meaningful hearing before being disciplined; had no protected liberty interest in a 60-day upward departure from standard segregation sanctions; and had adequate post-deprivation remedies for the random and unauthorized loss of his property. *Cf.* Fed. R. Crim. P. 41 (solution for improper seizure is a post-deprivation motion); *see also Sandin v. Conner*, 515 U.S. 472, 484 (1995) (protected liberty interest only arises if segregation imposes an "atypical and significant hardship . . . in relation to the ordinary incidents of prison life"); *Hudson*, 468 U.S. at 531-33 (random and unauthorized deprivation not actionable if state provides meaningful post-deprivation remedy); *Wolff v. McDonnell*, 418 U.S. 539, 563-67 (1974) (hearing adequate if plaintiff gets advance written notice of charges; an opportunity to present witnesses and evidence; and a written statement of relevant evidence, findings, and reasons for disciplinary action).

Hentz's remaining contentions are unpersuasive.

AFFIRMED.