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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CLARENCE JAY FAULKNER,

Plaintiff - Appellant,

v.

SHERI POTEET, Associate
Superintendent and SHANE MAITLAND,
Mailroom Supervisor,

Defendants - Appellees.

No. 09-35875

D.C. No. 3:08-cv-05508-RBL

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Ronald B. Leighton, District Judge, Presiding

Submitted November 16, 2010**

Before: TASHIMA, BERZON, and CLIFTON, Circuit Judges.

Clarence Jay Faulkner, a Washington state prisoner, appeals pro se from the district court's order granting summary judgment as to certain claims and dismissing with prejudice the remaining claims in his 42 U.S.C. § 1983 action

* 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).

alleging retaliation and due process claims under the First and Fourteenth Amendments. We have jurisdiction under 28 U.S.C. § 1291. We review de novo summary judgment and dismissal for failure to state a claim, *Barnett v. Centoni*, 31 F.3d 813, 815-16 (9th Cir. 1994) (per curiam), and may affirm on any grounds supported by the record, *Atel Fin. Corp. v. Quaker Coal Co.*, 321 F.3d 924, 926 (9th Cir. 2003) (per curiam). We affirm.

Defendants Poteet and Maitland were entitled to summary judgment on Faulkner's due process claim. Faulkner failed to establish a triable issue as to whether he was deprived of a protected interest due to the erroneous information in the mail restriction notices. *See Wright v. Riveland*, 219 F.3d 905, 913 (9th Cir. 2000) (to state a procedural due process claim, a plaintiff must allege "(1) a liberty of property interest protected by the Constitution; (2) a deprivation of the interest by the government; [and] (3) lack of process.") (internal citation and quotation omitted). Faulkner received a meaningful, due process hearing on the infraction. *See Wolff v. McDonnell*, 418 U.S. 539, 563-72 (1974) (setting forth the notice, hearing, and appeal requirements that a prisoner must receive as part of a disciplinary action).

Summary judgment on Faulkner's retaliation claim was appropriate because Faulkner did not establish a triable issue of fact as to whether defendant Maitland

acted with a retaliatory motive. *See Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005) (stating elements of a retaliation claim).

The district court did not abuse its discretion by dismissing Faulkner's complaint with prejudice, because amendment would be futile. *See Gardner v. Martino*, 563 F.3d 981, 990 (9th Cir. 2009).

AFFIRMED.