

DEC 27 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VINCENT C. WHITE, on behalf of
himself and others similarly situated,

Plaintiff - Appellant,

and

LEONARD WHITE, Jr., on behalf on
himself and others similarly situated,

Plaintiff,

v.

MICHAEL W. WYANNE, Secretary of
the Air Force and MICHAEL B.
DONLEY, Acting Secretary,

Defendants - Appellees.

No. 08-56870

D.C. No. 2:05-cv-07728-ABC-
FMO

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Audrey B. Collins, District Judge, Presiding

Submitted December 14, 2010**

* 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).

Before: GOODWIN, WALLACE, and W. FLETCHER, Circuit Judges.

Vincent C. White appeals pro se from the district court's summary judgments in his Title VII action alleging defendants discriminated and retaliated against him by not hiring him. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Wallis v. J.R. Simplot Co.*, 26 F.3d 885, 888 (9th Cir. 1994). We affirm.

The district court properly granted summary judgment on White's claims relating to positions 1, 2, 4, 5, 12, 18, 23, and 26-28 because White did not properly exhaust these claims before the Equal Employment Opportunity Commission ("EEOC"). *See* 29 C.F.R. § 1614.105(a)(1) (an EEOC counselor must be contacted within 45 days of the alleged discrimination); *Lyons v. England*, 307 F.3d 1092, 1103 (9th Cir. 2002) ("a plaintiff is required to exhaust his or her administrative remedies before seeking adjudication of a Title VII claim").

The district court properly granted summary judgment on White's claims relating to positions 8-11 and 13-17 because his action, filed more than 90 days after the EEOC's decision, was untimely. *See* 29 C.F.R. § 1614.407(c).

The district court properly granted summary judgment on White's claims relating to positions 3, 22, 24, 29 and 30 because White either abandoned these claims or conceded that defendants' decision not to hire him was not motivated by

discrimination or retaliation. *See Hollinger v. Titan Capital Corp.*, 914 F.2d 1564, 1578 (9th Cir. 1990).

The district court properly granted summary judgment on White's remaining claims because he failed to create a triable issue as to whether the defendants' legitimate reasons for not hiring him were pretextual. *See Leong v. Potter*, 347 F.3d 1117, 1124-25 (9th Cir. 2003) (affirming summary judgment on Title VII claims where plaintiff did not raise a genuine issue of material fact as to whether employer's legitimate, nondiscriminatory reason for challenged employment action was a pretext for discrimination); *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1065 n.10 (9th Cir. 2002) (retaliation case fails where plaintiff does not demonstrate pretext).

Contrary to White's contention, the district court did not abuse its discretion by denying his motion for additional discovery because White did not show that additional discovery would uncover specific facts which would preclude summary judgment. *See Maljack Prods. v. Goodtimes Home Video Corp.*, 81 F.3d 881, 888 (9th Cir. 1996).

We do not consider White's arguments not raised before the district court. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999).

White's remaining contentions are unpersuasive.

All pending motions are denied.

AFFIRMED.