

DEC 27 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STEPHEN P. DOWDNEY, JR.,

Plaintiff - Appellant,

v.

JAMES E. THATCHER; et al.,

Defendants - Appellees.

No. 09-35522

D.C. No. 2:08-cv-00337-LRS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Lonny R. Suko, District Judge, Presiding

Submitted December 14, 2010**

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

Stephen P. Dowdney, Jr., a Washington state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action for failure to state a claim. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's dismissal under 28 U.S.C. § 1915(e)(2), *Barren v. Harrington*,

* 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).

152 F.3d 1193, 1194 (9th Cir. 1998) (order), and 28 U.S.C. § 1915A, *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). We affirm.

The district court properly concluded that Dowdney does not have a liberty interest in avoiding transfer to an out-of-state prison because such a transfer does not impose an “atypical and significant” hardship in relation to the ordinary incidents of prison life. *Sandin v. Conner*, 515 U.S. 472, 484 (1995); *see also Olim v. Wakinekona*, 461 U.S. 238, 247 (1983) (“Confinement in another state . . . is within the normal limits or range of custody which the conviction has authorized the State to impose”) (citation and internal quotation marks omitted).

Dowdney’s contention that Washington Revised Code section 72.68.010 created a liberty interest protected by the Due Process Clause is unpersuasive. *See White v. Lambert*, 370 F.3d 1002, 1013 (9th Cir. 2004) (*overruled on other grounds by Hayward v. Marshall*, 603 F.3d 546 (9th Cir. 2010) (en banc)) (noting that the Washington Supreme Court explicitly upheld the Washington Department of Corrections’ authority under state law to authorize a transfer to an out-of-state privately-run prison).

Dowdney’s remaining contentions are unpersuasive.

Dowdney’s motion filed on June 22, 2009 is denied.

AFFIRMED.