

JAN 25 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MELVIN JOSEPH SIMMONS, JR.,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p style="text-align: center;">v.</p> <p>ANTHONY A. LAMARQUE, Warden; et al.,</p> <p style="text-align: center;">Defendants - Appellees.</p>

No. 07-16551

D.C. No. CV-03-04509-JW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
James Ware, District Judge, Presiding

Submitted January 10, 2011**

Before: BEEZER, TALLMAN, and CALLAHAN, Circuit Judges.

Melvin Joseph Simmons, Jr., a California prisoner, appeals pro se from the district court’s judgment dismissing his complaint under 42 U.S.C. § 1983 alleging

* 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).

that he was beaten by another prisoner as a result of prison officials' deliberate indifference to his safety when transporting the prisoners together. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's dismissal for failure to state a claim under 28 U.S.C. § 1915A, *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000) and for an abuse of discretion its denial of leave to amend, *Halet v. Wend Inv. Co.*, 672 F.2d 1305, 1310 (9th Cir. 1982). We affirm.

Simmons failed to state a deliberate indifference claim because he did not allege sufficient facts to establish that prison officials had reason to suspect another inmate would attack Simmons. *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994) (for claim of deliberate indifference to harm, prison official must be aware of facts from which he could infer the existence of a substantial risk of serious harm).

Simmons failed to state an equal protection claim because he did not allege facts establishing an intent or purpose to discriminate against him based upon his membership in a protected class. *See Thornton v. City of St. Helens*, 425 F.3d 1158, 1166 (9th Cir. 2005).

We deny Simmons's requests for appointment of counsel and disqualification of the district court judge.

Simmons's remaining contentions are unpersuasive.

AFFIRMED.