

FEB 25 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>KANAY MUBITA,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>LATAH COUNTY JAILERS; et al.,</p> <p>Defendants - Appellees.</p>
--

No. 09-35965

D.C. No. 1:07-cv-00062-EJL

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
Edward J. Lodge, District Judge, Presiding

Submitted February 15, 2011**

Before: CANBY, FERNANDEZ, and M. SMITH, Circuit Judges.

Kanay Mubita, an Idaho state prisoner, appeals pro se from the district court's judgment in his 42 U.S.C. § 1983 action alleging constitutional violations in connection with the conditions of his confinement and medical treatment in

* 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).

Latah County Jail. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Wyatt v. Terhune*, 315 F.3d 1108, 1117 (9th Cir. 2003). We affirm.

The district court properly dismissed Mubita's action because he failed to exhaust administrative remedies or demonstrate that he was excused from doing so. *See Woodford v. Ngo*, 548 U.S. 81, 85, 93-95 (2006) (holding that "proper exhaustion" is mandatory and requires adherence to administrative procedural rules).

The district court did not abuse its discretion by denying Mubita's request for appointment of counsel because he failed to demonstrate extraordinary circumstances. *See Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991) (setting forth standard of review and requirements for appointment of counsel).

Mubita's remaining contentions are unpersuasive.

Mubita's motion for leave to file exhibits in support of his Reply Brief is granted.

AFFIRMED.