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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JEREMY JEROME SMILEY,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>R. L. MARTINEZ and KANE,</p> <p>Defendants - Appellees.</p>

No. 10-15309

D.C. No. 3:08-cv-02592-SI

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Susan Illston, District Judge, Presiding

Submitted March 8, 2011**

Before: FARRIS, O’SCANNLAIN, and BYBEE, Circuit Judges.

Jeremy Jerome Smiley, a California state prisoner, appeals pro se from the district court’s judgment dismissing his 42 U.S.C. § 1983 action for failure to exhaust administrative remedies under the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a). We have jurisdiction under 28 U.S.C. § 1291. We review de novo the

* 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).

district court's dismissal for failure to exhaust, and for clear error its factual determinations. *Wyatt v. Terhune*, 315 F.3d 1108, 1117 (9th Cir. 2003). We affirm.

The district court properly dismissed Smiley's action because he failed to exhaust administrative remedies or demonstrate that no pertinent relief was available to him through the prison's internal process. *See Woodford v. Ngo*, 548 U.S. 81, 85, 93-95 (2006) ("proper exhaustion" is mandatory and requires adherence to administrative procedural rules); *cf. Marella v. Terhune*, 568 F.3d 1024, 1027 (9th Cir. 2009) (per curiam) (administrative appeals process was unavailable to inmate who had no ground to dispute the screen-out of his appeal).

Smiley's remaining contentions are unpersuasive.

Smiley's motion for appointment of counsel on appeal, attached to his opening brief, is denied.

AFFIRMED.