

APR 28 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROSARIO MARINELLO,

Plaintiff - Appellant,

v.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS & REHABILITATION,

Defendant - Appellee.

No. 09-17846

D.C. No. 5:08-cv-00664-JW

MEMORANDUM\*

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

Submitted April 5, 2011\*\*

Before: B. FLETCHER, CLIFTON, and BEA, Circuit Judges.

Rosario Marinello appeals pro se from the district court's summary judgment in his employment action alleging retaliation in violation of Title VII.

We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Learned v. City*

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\* 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).

*of Bellevue*, 860 F.2d 928, 931 (9th Cir. 1988), and we affirm.

The district court properly granted summary judgment because Marinello failed to raise a genuine issue of material fact as to whether he engaged in protected activity, and whether defendant's legitimate, nondiscriminatory reasons for its decision not to hire Marinello as a correctional counselor were a pretext for retaliation. *See Ray v. Henderson*, 217 F.3d 1234, 1240 (9th Cir. 2000); *see also Learned*, 860 F.2d at 932 (underlying discrimination must be reasonably perceived as prohibited by Title VII to constitute protected activity).

Marinello's remaining contentions are unpersuasive.

**AFFIRMED.**