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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>THOMAS M. JAMES,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>CHARLES L. RYAN; et al.,</p> <p>Defendants - Appellees.</p>

No. 10-15918

D.C. No. 2:10-cv-00510-GMS-JRI

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
G. Murray Snow, District Judge, Presiding

Submitted May 24, 2011**

Before: PREGERSON, THOMAS, and PAEZ, Circuit Judges.

Thomas M. James, an Arizona state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging that a prison policy banning sexually explicit materials violated his constitutional rights. We

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

* The panel unanimously concluded this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under 28 U.S.C. § 1915A. *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). We vacate and remand.

James alleges that the prison policy banned sexually explicit publications and all nudity in publications and photos. We are unable to say at this early stage of the proceeding that James cannot state a claim for a First Amendment violation. *See Dunn v. Castro*, 621 F.3d 1196, 1205 n.7 (9th Cir. 2010). Accordingly, we reverse and remand for further proceedings.

We do not consider James's arguments, including those related to retaliation and amendments to the policy, raised for the first time on appeal. *See Travelers Prop. Cas. Co. of Am. v. ConocoPhillips Co.*, 546 F.3d 1142, 1146 (9th Cir. 2008).

James's "Motion for Status" filed on October 14, 2010 is denied as moot.

James's "Motion for leave of Court; Motion for enlargement of Time" filed on October 14, 2010 is denied because it does not appear to relate to this appeal.

James shall bear his costs on appeal.

VACATED and REMANDED.