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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARK ALAN HAYS,

Plaintiff - Appellant,

v.

OFFICER SHANE ANDERSON, Seattle
Police Dept.; et al.,

Defendants - Appellees.

No. 10-35124

D.C. No. 2:09-cv-00098-RAJ

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Richard A. Jones, District Judge, Presiding

Submitted September 27, 2011**

Before: HAWKINS, SILVERMAN, and W. FLETCHER, Circuit Judges.

Mark Alan Hays appeals pro se from the district court’s summary judgment in his 42 U.S.C. § 1983 action alleging excessive force and other violations. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, and may affirm on

* 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). Accordingly, Hays’s request for oral argument is denied.

any basis supported by the record. *Henderson v. City of Simi Valley*, 305 F.3d 1052, 1055 (9th Cir. 2002). We affirm.

The district court properly granted summary judgment to defendants Hanley and Huber on Hays's § 1983 excessive force claim because a judgment in Hays's favor would necessarily imply the invalidity of his convictions for assaulting and obstructing a police officer, and Hays has not shown that his convictions have been invalidated. *See Heck v. Humphrey*, 512 U.S. 477, 487 (1994).

The district court properly dismissed the excessive force claim against defendants Anderson and Hagerty because Hays failed to raise a genuine dispute of material fact as to whether these officers made contact with him. *See Henderson*, 305 F.3d at 1061 (affirming summary judgment where evidence in support of excessive force claim was "woefully sparse").

The district court properly granted summary judgment on Hays's equal protection claim because Hays failed to raise a triable dispute as to whether he is a member of a protected class or whether any defendants acted with an intent to discriminate against him. *See Comm. Concerning Cmty. Improvement v. City of Modesto*, 583 F.3d 690, 702-03 (9th Cir. 2009) (to state an equal protection claim, plaintiff must show that defendant purposefully discriminated against him based upon plaintiff's membership in a protected class).

The district court did not abuse its discretion in denying Hays's late-filed motion to compel discovery. *See Hallet v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002) (setting forth standard of review).

Issues not raised in the opening brief, including those regarding Hays's conspiracy claim under 42 U.S.C. § 1985, are deemed waived. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999).

Hays's remaining contentions are unpersuasive.

AFFIRMED.