

OCT 11 2011

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>RODERICK L. MITCHELL,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>ROXAN SANDERS; et al.,</p> <p>Defendants - Appellees.</p>

No. 10-16929

D.C. No. 2:08-cv-02284-FCD-CMK

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Frank C. Damrell, Jr., District Judge, Presiding

Submitted September 27, 2011**

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

Roderick L. Mitchell, a California state prisoner, appeals pro se from the district court’s judgment dismissing his 42 U.S.C. § 1983 action alleging deliberate indifference to his serious medical needs. We have jurisdiction under 28 U.S.C.

* 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).

§ 1291. We review de novo a district court's dismissal under Federal Rule of Civil Procedure 12(b)(6), *Hebbe v. Pliler*, 627 F.3d 338, 341 (9th Cir. 2010), and for an abuse of discretion a dismissal without leave to amend, *Halet v. Wend Inv. Co.*, 672 F.2d 1305, 1310 (9th Cir. 1982). We affirm.

The district court properly dismissed the action because Mitchell failed to state sufficient facts to show that defendants acted with deliberate indifference to his carpal tunnel condition. *See Toguchi v. Chung*, 391 F.3d 1051, 1058 (9th Cir. 2004) (a prison official acts with deliberate indifference only if he or she knows of and disregards an excessive risk to the prisoner's health and safety, and a difference in medical opinion is insufficient to establish deliberate indifference).

The district court did not abuse its discretion by dismissing Mitchell's complaint without leave to amend because amendment would have been futile. *See Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc) (a district court need not grant leave to amend if the defects of the complaint cannot be cured).

Mitchell's remaining contentions are unpersuasive.

AFFIRMED.