

NOV 22 2011

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>KENNARD LEE DAVIS,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>MICHAEL YARBOROUGH; et al.,</p> <p>Defendants - Appellees.</p>

No. 10-17210

D.C. No. 2:04-cv-00821-LKK-KJM

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence K. Karlton, District Judge, Presiding

Submitted November 21, 2011 **

Before: TASHIMA, BERZON, and TALLMAN, Circuit Judges.

Kennard Lee Davis, a California state prisoner, appeals pro se from the district court’s summary judgment in his 42 U.S.C. § 1983 action alleging deliberate indifference to his serious medical needs. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion the district court’s decision

* 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).

not to appoint counsel, *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991), and decision not to hold an evidentiary hearing, *Stanley v. Schriro*, 598 F.3d 612, 617 (9th Cir. 2010). We affirm.

The district court did not abuse its discretion in denying Davis’s requests to appoint counsel because Davis did not show the “exceptional circumstances” required to appoint counsel under 28 U.S.C. § 1915(e)(1). *See Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (articulating standard).

The district court did not abuse its discretion in denying Davis’s requests for an evidentiary hearing because it could sufficiently evaluate Davis’s requests for counsel on the written record. *See Fed. R. Civ. P. 78(b)* (court may provide rule for determining motions on briefs); E.D. Cal. L.R. 230(l) (in prisoner actions, motions are deemed submitted on the record unless otherwise ordered).

We do not consider the district court’s summary judgment because Davis does not challenge it on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009) (per curiam).

AFFIRMED.