

FILED

UNITED STATES COURT OF APPEALS

DEC 22 2011

FOR THE NINTH CIRCUIT

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

AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL  
EMPLOYEES LOCAL 4041, in its  
individual capacity and its representative  
capacity on behalf of its members;  
RANDY LEE COOK,

Plaintiffs,

and

ROBERT LEE BIANCHI,

Plaintiff - Appellant,

v.

STATE OF NEVADA, ex rel its  
Department of Corrections; HOWARD  
SKOLNIK, individually and in his official  
capacity as Director of the Nevada  
Department of Corrections; CARLA  
CREVLING, individually and in her  
capacity as Personnel Officer of the  
Nevada Department of Corrections; PAT  
CONMAY, individually and in his official  
capacity as Inspector General for the  
Nevada Department of Corrections;  
WILLIAM DONAT, individually and in  
his official capacity as Warden for the  
Nevada State Prison,

Defendants - Appellees.

No. 10-17046

D.C. No. 3:09-cv-00235-LRH-  
RAM  
District of Nevada,  
Reno

ORDER

Before: HAWKINS, McKEOWN, and M. SMITH, Circuit Judges.

Appellant Bianchi's Petition for Panel Re-hearing, filed on December 15, 2011, is granted in part, without further oral argument.

The Memorandum disposition, filed on December 5, 2011, is amended per the Amended Memorandum filed concurrently with this Order.

No subsequent petitions for rehearing or rehearing en banc will be accepted for filing.

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capacity as Inspector General for the  
Nevada Department of Corrections;

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D.C. No.

3:09-cv-00235-LRH-RAM

AMENDED MEMORANDUM\*

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

WILLIAM DONAT, individually and in  
his official capacity as Warden for the  
Nevada State Prison,

Defendants - Appellees.

Appeal from the United States District Court  
for the District of Nevada  
Larry R. Hicks, District Judge, Presiding

Submitted November 16, 2011\*\*  
San Francisco, California

Before: HAWKINS, McKEOWN, and M. SMITH, Circuit Judges.

Robert Bianchi (“Bianchi”), a lieutenant at the Nevada State Prison with the Nevada Department of Corrections (“NDOC”), appeals the summary judgment dismissal of his § 1983 action, alleging that he was retaliated against by the NDOC in violation of his First Amendment rights. We have jurisdiction under 28 U.S.C. §1291, and affirm.

Bianchi contends that NDOC demoted him in retaliation for his involvement in a no-confidence petition regarding the Assistant Warden of Operations, Walter Donat, and issued him a letter of reprimand in retaliation for testifying regarding the petition at a trial. However, Bianchi successfully appealed each disciplinary action,

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

was reinstated to his former rank as a lieutenant, and the letter of reprimand was removed from his file. NDOC alleges that it had legitimate reasons for reprimanding Bianchi: he had failed to report on or properly supervise a misbehaving subordinate, and had misused a sick day and had given misleading statements about it.

Reviewing the grant of summary judgment de novo, we conclude Bianchi has not provided evidence sufficient to show any genuine issue of material fact. Retaliation claims against government employers must be supported by proof that protected speech was a “substantial or motivating factor in the adverse employment action.” *Eng v. Cooley*, 552 F.3d 1062, 1070-72 (9th Cir. 2009). To do so, a plaintiff must first present evidence the defendant had knowledge of the plaintiff’s protected speech. *Alpha Energy Savers, Inc. v. Hansen*, 381 F.3d 917, 928 (9th Cir. 2004) (citing *Keyser v. Sacramento City Unified Sch. Dist.*, 265 F.3d 741, 750-52 (9th Cir. 2001)). Bianchi relies on allegations in his complaint as well as in his affidavit—conclusory, self-serving, and lacking any supporting evidence—which fail to establish a genuine issue of material fact on summary judgment review. *F.T.C. v. Publ’g Clearing House, Inc.*, 104 F.3d 1168, 1171 (9th Cir. 1997) (citations omitted).

**AFFIRMED.**