

JAN 10 2012

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>TED DARNELL DANIELS,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>O. ALVARADO, Correctional Officer; et al.,</p> <p>Defendants - Appellees.</p>
--

No. 10-56245

D.C. No. 3:07-cv-01822-JM-POR

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Jeffrey T. Miller, District Judge, Presiding

Submitted December 19, 2011**

Before: GOODWIN, WALLACE, and McKEOWN, Circuit Judges.

Ted Darnell Daniels, a California state prisoner, appeals pro se from the district courts's summary judgment in his 42 U.S.C. § 1983 action alleging that prison officials used excessive force against him in violation of the Eighth

* 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).

Amendment. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *White v. Roper*, 901 F.2d 1501, 1503 (9th Cir. 1990). We affirm.

The district court properly granted summary judgment for defendants Alvarado and Harris because Daniels failed to raise a genuine dispute of material fact as to whether these defendants used physical force “maliciously and sadistically to cause him harm” rather than “in a good-faith effort to maintain or restore discipline[.]” *Hudson v. McMillian*, 503 U.S. 1, 6-7 (1992).

The district court did not abuse its discretion by denying Daniels’s motion for additional time to serve the summons and complaint on defendant Roberts because Daniels failed to show good cause. *See* Fed. R. Civ. P. 4(m) (requiring service within 120 days after the complaint is filed); *Oyama v. Sheehan (In re Sheehan)*, 253 F.3d 507, 511-12 (9th Cir. 2001) (setting forth standard of review and discussing factors to establish good cause).

Daniels’s remaining contentions, including those concerning discovery and evidentiary issues, are unpersuasive.

AFFIRMED.