

JAN 11 2012

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JAMES JEFFERSON KENNER,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>J. MERCER; et al.,</p> <p>Defendants - Appellees.</p>
---------------------------------------------------------------------------------------------------------------------------------

No. 11-15538

D.C. No. 3:09-cv-00127-ECR-VPC

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Nevada  
Edward C. Reed, Jr., District Judge, Presiding

Submitted December 19, 2011\*\*

Before: GOODWIN, WALLACE and McKEOWN, Circuit Judges.

Nevada state prisoner James Jefferson Kenner appeals pro se from the district court’s summary judgment in his 42 U.S.C. § 1983 action, alleging, among others claims, denial of due process. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004), and

---

\* 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).

we affirm.

The district court properly granted summary judgment on Kenner's due process claim because he failed to raise a genuine dispute of material fact as to whether he received timely written notice of the charges against him and an opportunity to be heard before being found guilty of violating prison rules at a disciplinary hearing. *See Wolff v. McDonnell*, 418 U.S. 539, 563-70 (1974) (explaining due process owed to prisoners facing a disciplinary charge).

Kenner's "statement of facts" in response to the appellees' answering brief is construed as his reply brief.

Kenner's remaining contentions are unpersuasive.

Issues not expressly addressed in Kenner's opening brief are waived. *See Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003).

**AFFIRMED.**