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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>GERALD JOHANNES,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p style="text-align: center;">v.</p> <p>JIM HERNANDEZ; STEPHANIE FRENCH,</p> <p style="text-align: center;">Defendants - Appellees.</p>
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No. 09-56286

D.C. No. 2:04-cv-00028-TJH-  
VBK

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Terry J. Hatter, Jr., District Judge, Presiding

Submitted December 19, 2011\*\*

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

Gerald Johannes appeals pro se from the district court’s judgment in his 42 U.S.C. § 1983 action alleging constitutional violations in connection with the use of restraints during an incident while he was confined at Atascadero State Hospital

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\* 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).

(“ASH”) awaiting civil commitment proceedings pursuant to California’s Sexually Violent Predators (“SVP”) Act. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Carver v. Lehman*, 558 F.3d 869, 872 (9th Cir. 2009), and we affirm.

Even if Johannes could show that he suffered a violation of his constitutional rights when he was placed in wrist restraints for thirty minutes after he refused to obey orders, the district court properly concluded that defendants were entitled to qualified immunity because the law regarding detention of individuals awaiting SVP proceedings was not clearly established at the time of the alleged violation in 2003. *See Pearson v. Callahan*, 555 U.S. 223, 243-44 (2009); *Jones v. Blanas*, 393 F.3d 918, 931-34 (9th Cir. 2004) (holding for the first time that an SVP detainee “is entitled to conditions of confinement that are not punitive”).

Johannes’s remaining contentions, including those concerning whether an ASH administrative directive mandates a different conclusion, are unpersuasive.

**AFFIRMED.**