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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ROBERT TOWN,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>ALVIN FODE,</p> <p>Defendant - Appellee.</p>
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No. 11-35039

D.C. No. 6:09-cv-00007-DWM

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Montana  
Donald W. Molloy, District Judge, Presiding

Submitted February 21, 2012\*\*

Before: FERNANDEZ, McKEOWN, and BYBEE, Circuit Judges.

Robert Town, a Montana state prisoner, appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging that the defendant used excessive force against him. We have jurisdiction under 28 U.S.C.

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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).

§ 1291. We review de novo. *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004). We affirm.

The district court properly granted summary judgment because Town failed to raise a genuine dispute of material fact as to whether the alleged force was applied maliciously or sadistically to cause harm. *See Hudson v. McMillian*, 503 U.S. 1, 7 (1992) (explaining that “the core judicial inquiry is . . . whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm”).

Town’s remaining contentions are unpersuasive.

**AFFIRMED.**