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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>DONALD JEFFERY,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>BENNGE, M.T.A.; et al.,</p> <p>Defendants - Appellees.</p>
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No. 11-16965

D.C. No. 1:06-cv-00752-GBC

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Gerald B. Cohn, Magistrate Judge, Presiding

Submitted May 15, 2012 \*\*

Before: CANBY, GRABER and M. SMITH, Circuit Judges.

Donald Jeffery, an inmate at the California Substance Abuse Treatment Facility, appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging violations of his constitutional rights in connection with a

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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).

2003 incident in which prison officials used excessive force against him. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Jones v. Blanas*, 393 F.3d 918, 926 (9th Cir. 2004), and we vacate and remand.

The district court concluded that Jeffery's excessive force claim was barred under *Edwards v. Balisok*, 502 U.S. 641 648 (1997), because he had failed to set forth evidence demonstrating that his rule-violation conviction, arising from the same 2003 incident, had been invalidated. On appeal, appellees acknowledge that the district court erred in granting their motion for summary judgment because Jeffery's rule violation conviction had in fact been invalidated before he filed his § 1983 complaint. Appellees assert therefore that the *Edwards* bar does not apply and that this case should be remanded to the district court. Because it appears that Jeffery's rule violation conviction in connection with the 2003 incident has been invalidated, we vacate the grant of summary judgment in favor of defendants on Jeffery's excessive force claim and remand for further proceedings.

**VACATED and REMANDED.**