

MAY 25 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LAWTIS DONALD RHODEN,

Plaintiff - Appellant,

v.

STEPHEN W. MAYBERG, Director of
The California Dept. of Mental Health; et
al.,

Defendants - Appellees.

No. 11-15235

D.C. No. 1:07-cv-01151-BLW-
LMB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
B. Lynn Winmill, Chief Judge, Presiding**

Submitted May 15, 2012***

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

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The Honorable B. Lynn Winmill, United States Chief Judge for the District of Idaho, sitting by designation.

*** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Lawtis Donald Rhoden, who is civilly committed in California as a sexually violent predator, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging defendants violated his Fourteenth Amendment rights by failing to provide greater access to a smoke-free outdoor exercise area between 2006 and 2008. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's dismissal on qualified immunity grounds. *Kwai Fun Wong v. United States*, 373 F.3d 952, 966 n.18 (9th Cir. 2004). We affirm.

The district court properly dismissed Rhoden's action after concluding that defendants were entitled to qualified immunity because the law regarding the right of civil detainees to regular smoke-free outdoor exercise was not clearly established. *See Hope v. Pelzer*, 536 U.S. 730, 739 (2002) ("For a constitutional right to be clearly established, its contours must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." (internal quotation marks omitted)).

AFFIRMED.