

JUL 12 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANCIS W. DAVIS,

Plaintiff - Appellant,

v.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION; et al.,

Defendants - Appellees.

No. 11-15705

D.C. No. 1:09-cv-01171-OWW-  
GBC

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Oliver W. Wanger, District Judge, Presiding

Submitted June 26, 2012\*\*

Before: SCHROEDER, HAWKINS, and GOULD, Circuit Judges.

California state prisoner Francis W. Davis appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action, without prejudice, for

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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).

failure to exhaust administrative remedies under the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a). We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Wyatt v. Terhune*, 315 F.3d 1108, 1117 (9th Cir. 2003) (dismissal for failure to exhaust administrative remedies); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (order) (dismissal under 28 U.S.C. § 1915(e)). We affirm.

The district court properly dismissed Davis’s action because it is clear from the face of the complaint that Davis did not properly exhaust administrative remedies before filing his complaint. *See Woodford v. Ngo*, 548 U.S. 81, 85, 93-95 (2006) (“proper exhaustion” is mandatory and requires adherence to administrative procedural rules); *Wyatt*, 315 F.3d at 1120 (“A prisoner’s concession to nonexhaustion is a valid grounds for dismissal, so long as no exception to exhaustion applies.”). Contrary to Davis’s contentions, prison officials properly screened his appeal for failure to follow the procedural rules of the appeals process. *See Sapp v. Kimbrell*, 623 F.3d 813, 823 (9th Cir. 2010) (administrative remedies are available where administrative appeals are screened for proper reasons).

Davis’s remaining contentions are unpersuasive.

Davis’s emergency motion regarding legal property, filed on April 14, 2011, is denied.

**AFFIRMED.**