

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 23 2012

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

LARRY W. KIRK,

Plaintiff - Appellant,

v.

R. J. RACKLEY; et al.,

Defendants - Appellees.

No. 11-15667

D.C. No. 2:09-cv-01866-FCD-  
CMK

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Frank C. Damrell, Jr., District Judge, Presiding

Submitted July 17, 2012\*\*

Before: SCHROEDER, THOMAS, and SILVERMAN, Circuit Judges.

Larry W. Kirk, a California state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging due process violations arising from his continued confinement in administrative segregation.

We have jurisdiction under 28 U.S.C. § 1291. We review de novo dismissals

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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).

under Federal Rule of Civil Procedure 12(b)(6), *Watson v. Weeks*, 436 F.3d 1152, 1157 (9th Cir. 2006), and we affirm.

The district court properly dismissed Kirk's due process claims because, to the extent that he demonstrated a liberty interest in avoiding continued confinement in administrative segregation, Kirk's complaint demonstrates that he was afforded all the process to which he was constitutionally entitled. *See Toussaint v. McCarthy*, 801 F.2d 1080, 1100-01 (9th Cir. 1986) (explaining due process procedures to which prisoners with liberty interests in their placements are entitled, and noting that some sort of periodic review of an inmate's continued segregated confinement is necessary), *abrogated in part on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995).

Kirk's motion for clarification of information, filed July 28, 2011, is construed as a reply brief.

**AFFIRMED.**