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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BRADLEY VANDYKE,

Plaintiff - Appellant,

v.

D. K. SISTO, Warden; et al.,

Defendants - Appellees.

No. 11-17380

D.C. No. 2:08-cv-03120-JLQ

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Justin L. Quackenbush, District Judge, Presiding

Submitted October 9, 2012**

Before: RAWLINSON, MURGUIA, and WATFORD, Circuit Judges.

Bradley VanDyke, a California state prisoner, appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging that prison officials were deliberately indifferent to his safety by failing to protect him

* 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).

from gang violence. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004), and we affirm.

The district court properly granted summary judgment because VanDyke failed to raise a genuine dispute of material fact as to whether defendants knew of and disregarded an excessive risk to his safety. *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994) (a prison official cannot be found liable for failing to protect one inmate from another “unless the official knows of and disregards an excessive risk to inmate health or safety”); *Berg v. Kincheloe*, 794 F.2d 457, 462 (9th Cir. 1986) (a dispute over the existence of arguably superior alternatives to the action taken by prison officials will not defeat summary judgment).

AFFIRMED.