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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>TYRONE WALLACE,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>RICHARD TULL, Correctional Officer,</p> <p>Defendant - Appellee.</p>
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No. 11-55872

D.C. No. 2:09-cv-05075-VAP-
AGR

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Virginia A. Phillips, District Judge, Presiding

Submitted December 19, 2012**

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

California state prisoner Tyrone Wallace appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging excessive force under the Eighth Amendment. We have jurisdiction under 28 U.S.C. §1291.

* 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).

We review de novo. *Jones v. Blanas*, 393 F.3d 918, 926 (9th Cir. 2004). We affirm.

The district court properly granted summary judgment because Wallace failed to raise a genuine dispute of material fact as to whether the force was not applied in a good faith effort to restore prison discipline. *See Whitley v. Albers*, 475 U.S. 312, 319 (1986); *see also Karam v. City of Burbank*, 352 F.3d 1188, 1194 (9th Cir. 2003) (speculation as to defendant's improper motive does not rise to the level of evidence sufficient to state a triable issue of fact).

AFFIRMED.