

APR 22 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>BRYAN DENNIE,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p>v.</p> <p>BRIAN E. WILLIAMS; et al.,</p> <p style="text-align: center;">Defendants - Appellees.</p>

No. 12-15764

D.C. No. 2:11-cv-00828-KJD-CWH

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Kent J. Dawson, District Judge, Presiding

Submitted April 16, 2013**

Before: CANBY, IKUTA, and WATFORD, Circuit Judges.

Nevada state prisoner Bryan Dennie appeals pro se from the district court’s judgment dismissing his 42 U.S.C. § 1983 action alleging that defendants denied him adequate ventilation. We have jurisdiction under 28 U.S.C. § 1291. We

* 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).

review de novo a dismissal for failure to exhaust administrative remedies, and for clear error the district court's underlying factual determinations. *Wyatt v. Terhune*, 315 F.3d 1108, 1117 (9th Cir. 2003). We affirm.

The district court properly dismissed Dennie's action because Dennie did not exhaust prison grievance procedures concerning his claim and failed to show that exhaustion was effectively unavailable. *See Woodford v. Ngo*, 548 U.S. 81, 93-95 (2006) (exhaustion is mandatory and must be done in a timely manner consistent with prison policies); *Nunez v. Duncan*, 591 F.3d 1217, 1224 (9th Cir. 2010) (excusing prisoner's failure to exhaust where prisoner is prevented from doing so).

AFFIRMED.