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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>DAVID L ERICKSON,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>SARGEANT LOPEZ,</p> <p>Defendant - Appellee.</p>

No. 12-35506

D.C. No. 3:11-cv-05982-RJB

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Robert J. Bryan, District Judge, Presiding

Submitted April 16, 2013**

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

Washington state prisoner David L. Erickson appeals pro se from the district court’s summary judgment in his 42 U.S.C. § 1983 action alleging First and Eighth Amendment violations. 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.

* 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).

The district court properly granted summary judgment on Erickson's claim that defendant failed to protect him from inmate assault because Erickson failed to raise a genuine dispute of material fact as to whether defendant knew of and disregarded an excessive risk to Erickson's safety. *See id.* at 1056-57 (a prison official is deliberately indifferent only if he knows of and disregards an excessive risk to an inmate's safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference).

AFFIRMED.