

JUN 14 2013

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JEFFERY BROADWAY,

Plaintiff - Appellant,

v.

LYNN, Correctional Sergeant; et al.,

Defendants - Appellees.

No. 09-17108

D.C. No. 2:09-cv-00192-GGH

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Gregory G. Hollows, Magistrate Judge, Presiding**

Submitted June 10, 2013***

Before: HAWKINS, McKEOWN, and BERZON, Circuit Judges.

California state prisoner Jeffery Broadway appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging excessive force

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** Broadway consented to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c).

*** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

and other claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under 28 U.S.C. § 1915(A), *Resnick v Hayes*, 213 F.3d 443, 447 (9th Cir. 2000), and we affirm.

The district court properly dismissed Broadway's excessive force claim because Broadway failed to allege facts sufficient to show that defendants maliciously and sadistically used force against him for the very purpose of causing him harm. *See Whitley v. Albers*, 475 U.S. 312, 319-21 (1986) (setting forth elements of excessive force claim).

Broadway's contentions regarding alleged due process violations are unpersuasive.

Broadway's motion for appointment of counsel, submitted with his opening brief, is denied.

AFFIRMED.