

JUN 20 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>DONALD R. WALKER,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p>v.</p> <p>DONALD POM PAN, M.D. (Orthopedic Surgeon); et al.,</p> <p style="text-align: center;">Defendants - Appellees.</p>

No. 12-15961

D.C. No. 3:10-cv-01425-TEH

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Thelton E. Henderson, District Judge, Presiding

Submitted June 18, 2013**

Before: TALLMAN, M. SMITH, and HURWITZ, Circuit Judges.

California state prisoner Donald R. Walker appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging deliberate indifference to his serious medical needs. We have jurisdiction under 28 U.S.C.

* 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).

§ 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 Walker failed to raise a genuine dispute of material fact as to whether defendants were deliberately indifferent when they denied him knee replacement surgery after he had received arthroscopic surgery to repair his knee. *See id.* at 1060 (“Deliberate indifference is a high legal standard. A showing of medical malpractice or negligence is insufficient to establish a constitutional deprivation under the Eighth Amendment.”); *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996) (to establish that a difference of opinion amounted to deliberate indifference, a prisoner must show that the defendants’ chosen course of treatment was medically unacceptable and in conscious disregard of an excessive risk to the prisoner’s health).

AFFIRMED.