

JUN 26 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOHN PATRICK KELLY,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>UNKNOWN MANRIQUEZ, CO II,</p> <p>Defendant - Appellee.</p>
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No. 11-18070

D.C. No. 2:09-cv-02711-PGR

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Paul G. Rosenblatt, District Judge, Presiding

Submitted June 18, 2013**

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

John Patrick Kelly, an Arizona state prisoner, appeals pro se from the district court’s judgment dismissing his 42 U.S.C. § 1983 action alleging that a photo was taken of his genitals during a medical procedure without his consent. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court’s

* 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).

dismissal on the basis of qualified immunity. *Kwai Fun Wong v. United States*, 373 F.3d 952, 966 n.18 (9th Cir. 2004). We affirm.

The district court properly dismissed Kelly's action because defendant is entitled to qualified immunity with respect to Kelly's claim that defendant's conduct violated Kelly's Eighth Amendment rights. *See Pearson v. Callahan*, 555 U.S. 223, 232 (2009) (defendant is entitled to qualified immunity unless the conduct at issue violated a clearly established constitutional right).

We do not consider matters neither developed in the district court nor specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009) (per curiam).

AFFIRMED.