

AUG 20 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>CONDALEE MORRIS,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>J. SANDOVAL, RN; et al.,</p> <p>Defendants - Appellees.</p>
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No. 12-55735

D.C. No. 3:10-cv-01305-JAH-NLS

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
John A. Houston, District Judge, Presiding

Submitted August 14, 2013**

Before: SCHROEDER, GRABER, and PAEZ, Circuit Judges.

California state prisoner Condalee Morris appeals pro se from the district court’s judgment dismissing his 42 U.S.C. § 1983 action alleging that defendants were deliberately indifferent to his serious medical needs. We have jurisdiction

* 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).

under 28 U.S.C. § 1291. We review de novo. *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005). We affirm.

The district court properly dismissed Morris's action because Morris failed to allege facts demonstrating that defendants knew of and disregarded an excessive risk to his health or failed to provide him with prompt medical treatment. *See Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (to establish deliberate indifference based on a delay in treatment, a prisoner must show that the delay resulted in further significant injury or the unnecessary and wanton infliction of pain); *Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004) (a prison official is deliberately indifferent only if he or she knows of and disregards an excessive risk to an inmate's health).

The district court did not abuse its discretion in dismissing without leave to amend because the deficiencies in Morris's complaint could not be cured by amendment. *See Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc) (setting forth standard of review and explaining that leave to amend should be given unless the deficiencies in the complaint cannot be cured by amendment).

Morris's contention that the district court should have allowed discovery is unpersuasive.

Defendants' request to strike portions of Morris's opening brief, set forth in their answering brief, is denied.

AFFIRMED.