

OCT 10 2013

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TONY FRENCH,

Plaintiff - Appellant,

v.

SNAKE RIVER CORRECTIONAL
INSTITUTION; T. PAYNE, Officer,

Defendants - Appellees.

No. 12-36038

D.C. No. 2:11-cv-01108-JO

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Robert E. Jones, District Judge, Presiding

Submitted September 24, 2013**

Before: RAWLINSON, N.R. SMITH, and CHRISTEN, Circuit Judges.

Oregon state prisoner Tony French appeals pro se from the district court’s judgment in his 42 U.S.C. § 1983 action alleging violations of his First and Eighth Amendment rights. We have jurisdiction under 28 U.S.C. § 1291. We review de

* 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).

novo a dismissal for failure to exhaust administrative remedies and for clear error any underlying factual findings. *Wyatt v. Terhune*, 315 F.3d 1108, 1117 (9th Cir. 2003). We affirm.

The district court properly dismissed French’s action without prejudice because French did not properly exhaust his administrative remedies before filing suit. *See Woodford v. Ngo*, 548 U.S. 81, 93-95 (2006) (holding that “proper exhaustion” is mandatory and requires adherence to administrative procedural rules). French’s argument on appeal that his grievances and related papers were “mysteriously” lost is unpersuasive.

AFFIRMED.