

JAN 27 2014

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PETER GONZALEZ,

Plaintiff - Appellee,

v.

J. GARIBAY, Correctional Officer,

Defendant - Appellant,

And

M. A. SMELOSKI, Warden; N.
GRANNIS, Chief Inmate Appeals,

Defendants.

No. 12-56610

D.C. No. 3:09-cv-01080-W-MDD

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Thomas J. Whelan, District Judge, Presiding

Submitted January 21, 2014**

Before: CANBY, SILVERMAN, and PAEZ, Circuit Judges.

* 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).

J. Garibay, a California state correctional officer, appeals from the district court's order denying him qualified immunity in Peter Gonzalez's 42 U.S.C. § 1983 action alleging that Garibay retaliated against Gonzalez because Gonzalez filed a grievance against Garibay. We dismiss for lack of appellate jurisdiction.

We lack jurisdiction to consider this interlocutory appeal because "an order denying qualified immunity on the ground that a genuine issue of material fact exists is not a final, immediately appealable order." *Maropulos v. County of Los Angeles*, 560 F.3d 974, 975 (9th Cir. 2009) (per curiam), citing *Johnson v. Jones*, 515 U.S. 304, 313-20 (1995). The district court denied qualified immunity to Garibay after determining that there were genuine disputes of material fact as to whether Garibay's negative work evaluation and transfer recommendation were retaliatory, and that those facts, if proven, would establish a violation of Gonzalez's clearly established First Amendment rights. Accordingly, we dismiss this appeal for lack of jurisdiction.

DISMISSED.