

JAN 28 2014

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAMES DAVID KARNATH,

Plaintiff - Appellant,

v.

TRACY DANIELS,

Defendant - Appellee.

No. 12-35089

D.C. No. 2:08-cv-01002-RSM

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Ricardo S. Martinez, District Judge, Presiding

Submitted January 21, 2014**

Before: CANBY, SILVERMAN and PAEZ, Circuit Judges.

Washington state prisoner James David Karnath appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging

* 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).

excessive force. We have jurisdiction under 28 U.S.C. § 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 Karnath failed to raise a genuine dispute of material fact as to whether defendant maliciously and sadistically used force against him for the very purpose of causing him harm while escorting him to protective custody against his wishes. *See Whitley v. Albers*, 475 U.S. 312, 319-21 (1986) (setting forth elements of excessive force claim).

We do not address issues raised by Karnath for the first time on appeal regarding alleged repeated injuries to his hands and wrists from the use of restraints and unspecified unconstitutional conditions of confinement and torture. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009) (per curiam).

Karnath's contentions regarding unanswered admissions that allegedly resulted in defendant "defaulting the case to Plaintiff," and "papers on sovereignty" which go to "the issue of Jurisdiction," are unpersuasive.

AFFIRMED.