

FEB 28 2014

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JARMAAL SMITH,

Plaintiff - Appellant,

v.

NANCY ADAMS; et al.,

Defendants - Appellees.

No. 13-15869

D.C. No. 4:10-cv-04389-CW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Claudia Wilken, Chief Judge, Presiding

Submitted February 18, 2014**

Before: ALARCÓN, O’SANNLAIN, and FERNANDEZ, Circuit Judges.

California state prisoner Jarmaal Smith appeals pro se from the district court’s summary judgment in his 42 U.S.C. § 1983 action alleging deliberate indifference to his serious medical needs. We have jurisdiction under 28 U.S.C.

* 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).

§ 1291. We review de novo. *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004). We affirm.

The district court properly granted summary judgment because Smith failed to raise a genuine dispute of material fact as to whether defendants were deliberately indifferent to the treatment of his headaches, facial twitching, and chest pain. *See id.* at 1057-60 (a prison official acts with deliberate indifference only if he or she knows of and disregards an excessive risk to a prisoner's health; negligence and a mere difference in medical opinion are insufficient).

The district court did not abuse its discretion in denying Smith's discovery requests because the requested discovery would not have helped Smith prove a viable claim. *See Jones v. Blanas*, 393 F.3d 918, 926, 930 (9th Cir. 2004) (setting forth standard of review and explaining that summary judgment is appropriate, even in the face of additional discovery requests, where "such discovery would be 'fruitless' with respect to the proof of a viable claim" (citation omitted)).

AFFIRMED.