

MAR 4 2014

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>DARREN EUGENE SHERMAN-BEY,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>MATTHEW L. CATE, Secretary of the California Department of Correction & Rehabilitation, official capacity; et al.,</p> <p>Defendants - Appellees.</p>
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No. 13-55337

D.C. No. 2:12-cv-09281-RGK-RZ

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding

Submitted February 18, 2014**

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

California state prisoner Darren Eugene Sherman-Bey appeals pro se from the district court’s judgment dismissing his 42 U.S.C. § 1983 action alleging deliberate indifference to his serious medical needs. We have jurisdiction under 28

* 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).

U.S.C. § 1291. We review de novo a dismissal under 28 U.S.C. § 1915(e), *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (order), and we affirm.

The district court properly dismissed Sherman-Bey's action because Sherman-Bey failed to allege facts sufficient to show that defendants consciously disregarded a serious risk to his health when delayed renewal of an exemption from prison policy allowing him to continue carrying his prescription pain medicine on his person. *See Farmer v. Brennan*, 511 U.S. 825, 845, 847 (1994) (a prison official acts with deliberate indifference by failing to take reasonable measures to abate a substantial risk of serious harm to an inmate's health); *Toguchi v. Chung*, 391 F.3d 1051, 1060 (9th Cir. 2004) (explaining that "[d]eliberate indifference is a high legal standard," and that medical malpractice or gross negligence is insufficient to establish deliberate indifference to serious medical needs).

AFFIRMED.