

APR 14 2014

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOSEPH MORENO,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>ELIZABETH WALSH; et al.,</p> <p>Defendants - Appellees.</p>
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No. 13-15438

D.C. No. 3:11-cv-00179-LRH-WGC

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Larry R. Hicks, District Judge, Presiding

Submitted April 7, 2014**

Before: TASHIMA, GRABER, and IKUTA, Circuit Judges.

Former Nevada state prisoner Joseph Moreno appeals pro se from the district court’s summary judgment in his 42 U.S.C. § 1983 action alleging that defendants were deliberately indifferent to his safety in failing to protect him from being sexually assaulted by another inmate. 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), and we affirm.

The district court properly granted summary judgment because Moreno failed to raise a genuine dispute of material fact as to whether defendants knew of a substantial risk of serious harm to Moreno from a sexual assault by another inmate. *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994) (holding that “a prison official cannot be found liable under the Eighth Amendment . . . unless the official knows of and disregards an excessive risk to inmate . . . safety”); *Berg v. Kincheloe*, 794 F.2d 457, 460 (9th Cir. 1986) (summary judgment was proper where plaintiff had not provided evidence demonstrating that defendants “had any reason to believe” that plaintiff would be attacked).

Moreno’s contention that the district court’s improperly denied his motion for relief from retaliation is unpersuasive.

AFFIRMED.