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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>CLARENCE LEON DEWS</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>EDMUND BROWN, et al.,</p> <p>Defendants - Appellees.</p>

No. 13-16282

D.C. No. 1:12-cv-00278-AWI-SKO

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Anthony W. Ishii, District Judge, Presiding

Submitted June 12, 2014**

Before: McKEOWN, WARDLAW, and M. SMITH, Circuit Judges.

California state prisoner Clarence Leon Dews appeals pro se from the district court’s judgment dismissing his 42 U.S.C. § 1983 action alleging Eighth and Fourteenth Amendment violations in connection with his transfer and subsequent denial of surgery. We have jurisdiction under 28 U.S.C. § 1291. We

* 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).

review de novo a dismissal for failure to state a claim under 28 U.S.C. §§ 1915A and 1915(e)(2). *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (order). We affirm.

The district court properly dismissed Dews's Eighth Amendment claim because Dews failed to allege facts showing that defendants knew that Dews faced substantial risk of serious harm to his health and disregarded that risk by failing to take reasonable measures to abate it. *See Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (elements of an Eighth Amendment claim).

The district court properly dismissed Dews's Fourteenth Amendment claims because Dews failed to allege facts showing that defendants deprived him of a recognized property or liberty interest, *see Bd. of Regents v. Roth*, 408 U.S. 564, 569-71 (1972), intentionally treated him differently from others who were similarly situated without a rational basis, *see N. Pacifica LLC v. City of Pacifica*, 526 F.3d 478, 486 (9th Cir. 2008), or intentionally discriminated against him on the basis of his membership in a protected class *see Thornton v. City of St. Helens*, 425 F.3d 1158, 1166 (9th Cir. 2005).

The district court properly dismissed Dews's conspiracy claim because Dews failed to allege an "underlying constitutional violation." *Lacey v. Maricopa County*, 693 F.3d 896, 935 (9th Cir. 2012) (en banc).

We do not consider issues raised for the first time on appeal. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999).

Dews's motion to proceed in forma pauperis, filed on April 21, 2014, is denied as unnecessary.

AFFIRMED.