

AUG 20 2014

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

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

FOR THE NINTH CIRCUIT

KEVIN O'CONNELL,

Plaintiff - Appellant,

v.

KERN VALLEY STATE PRISON; et al.,

Defendants - Appellees.

No. 13-16689

D.C. No. 1:11-cv-02163-BAM

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Barbara A. McAuliffe, Magistrate Judge, Presiding**

Submitted August 13, 2014***

Before: SCHROEDER, THOMAS, and HURWITZ, Circuit Judges.

California state prisoner Kevin O'Connell appeals pro se from the district court's judgment dismissing for failure to exhaust administrative remedies his 42

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The parties consented to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c).

*** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

U.S.C. § 1983 action alleging excessive force. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Sapp v. Kimbrell*, 623 F.3d 813, 821 (9th Cir. 2010), and we affirm.

The district court properly concluded that O’Connell failed to exhaust his administrative remedies because O’Connell did not complete the prison’s grievance procedures concerning his claim or show that exhaustion was effectively unavailable. *See Woodford v. Ngo*, 548 U.S. 81, 85, 93-95 (2006) (exhaustion is mandatory and must be done in a timely manner consistent with prison policies); *cf. Nunez v. Duncan*, 591 F.3d 1217, 1224 (9th Cir. 2010) (excusing prisoner’s failure to exhaust where prisoner is prevented from doing so by a prison official’s mistake).

AFFIRMED.