

AUG 21 2014

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VERNON WAYNE McNEAL, JR.,

Plaintiff - Appellant,

v.

J. RUSH; O. SPENCER,

Defendants - Appellees.

No. 12-17196

D.C. No. 5:11-cv-02798-EJD

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Edward J. Davila, District Judge, Presiding

Submitted August 13, 2014**

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

California state prisoner Vernon Wayne McNeal, Jr., appeals pro se from the district court’s judgment dismissing for failure to exhaust administrative remedies his 42 U.S.C. § 1983 action alleging Eighth Amendment claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Sapp v. Kimbrell*, 623

* 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).

F.3d 813, 821 (9th Cir. 2010), and we affirm.

The district court properly concluded that McNeal failed to exhaust his administrative remedies, and that McNeal did not demonstrate that such remedies were effectively unavailable to him. *See Woodford v. Ngo*, 548 U.S. 81, 85, 93-95 (2006) (holding that “proper exhaustion” is mandatory and requires adherence to administrative procedural rules); *Nunez v. Duncan*, 591 F.3d 1217, 1224 (9th Cir. 2010) (where defendant establishes failure to exhaust, burden shifts to plaintiff to prove that administrative remedies were unavailable to him).

AFFIRMED.