

AUG 22 2014

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JAMES EDWARD BOWELL,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p style="text-align: center;">v.</p> <p>T. SMITH,</p> <p style="text-align: center;">Defendant - Appellee.</p>
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No. 13-16530

D.C. No. 2:12-cv-00603-JAM-  
EFB

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
John A. Mendez, District Judge, Presiding

Submitted August 13, 2014\*\*

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

California state prisoner James Edward Bowell appeals pro se from the district court’s judgment dismissing for failure to exhaust administrative remedies his 42 U.S.C. § 1983 action alleging excessive force by a prison official. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Albino v. Baca*, 747

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\* 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 1162, 1171 (9th Cir. 2014) (en banc). We affirm.

The district court properly concluded that Bowell failed to exhaust his administrative remedies because Bowell did not exhaust his grievance to the final level of review or demonstrate that administrative 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); *Sapp v. Kimbrell*, 623 F.3d 813, 823-24 (9th Cir. 2010) (for administrative remedies to be effectively unavailable, “the inmate must establish (1) that he actually filed a grievance or grievances that, if pursued through all levels of administrative appeals, would have sufficed to exhaust the claim that he seeks to pursue in federal court, and (2) that prison officials screened his grievance or grievances for reasons inconsistent with or unsupported by applicable regulations”).

Bowell’s request for publication, filed on January 31, 2014, is denied.

Bowell’s request for appellate counsel, set forth in his opening brief, is denied.

Appellee’s motion to strike Bowell’s “Supplemental Clarification” is granted.

**AFFIRMED.**

Bowell v. Smith, No. 13-16530

THOMAS, Circuit Judge, dissenting:

I respectfully dissent.