

OCT 21 2014

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT EUGENE GARRETT,

Plaintiff - Appellant,

v.

JOHN P. WOLHER, Dr., Health Care
Provider at ASPC-Eyman,

Defendant - Appellee.

No. 13-16017

D.C. No. 2:10-cv-00258-PGR

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Paul G. Rosenblatt, District Judge, Presiding

Submitted October 14, 2014**

Before: LEAVY, GOULD, and BERZON, Circuit Judges.

Robert Eugene Garrett, an Arizona state prisoner, appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging deliberate indifference to his serious medical needs. We have jurisdiction under 28

* 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).

U.S.C. § 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 Garrett failed to raise a genuine dispute of material fact as to whether defendant was deliberately indifferent to his lower back injury or pain. *See id.* at 1057-58 (a prison official acts with deliberate indifference only if he or she knows of and disregards an excessive risk to the prisoner’s health and safety; negligence and a mere difference in medical opinion are insufficient); *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996) (to establish that a difference of medical opinion amounted to deliberate indifference, a prisoner “must show that the course of treatment the doctors chose was medically unacceptable under the circumstances” and “that they chose this course in conscious disregard of an excessive risk to [the prisoner’s] health”).

AFFIRMED.