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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ELONZA JESSE TYLER,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>DENNIS C. SMITH; NANCY N. ERLY,</p> <p>Defendants - Appellees.</p>
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No. 13-17033

D.C. No. 1:04-cv-06638-LJO-BAM

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O’Neill, District Judge, Presiding

Submitted November 18, 2014**

Before: LEAVY, FISHER, and N.R. SMITH, Circuit Judges.

Elonza Jesse Tyler, a California 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 U.S.C. § 1291. We review de novo cross motions for summary judgment,

* 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).

Guatay Christian Fellowship v. County of San Diego, 670 F.3d 957, 970 (9th Cir. 2011), and we affirm.

The district court properly granted summary judgment for defendant because Tyler failed to raise a genuine dispute of material fact as to whether defendant was deliberately indifferent to Tyler’s knee injury. *See Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (deliberate indifference requires “a purposeful act or failure to respond to a prisoner’s pain or possible medical need” and “harm caused by the indifference”); *Toguchi v. Chung*, 391 F.3d 1051, 1057-58 (9th Cir. 2004) (difference of opinion concerning the appropriate course of treatment does not amount to deliberate indifference).

Tyler’s second motion for appointment of counsel, filed on December 26, 2013, is denied.

We do not consider arguments and allegations raised for the first time on appeal, or matters not specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009) (per curiam).

AFFIRMED.