

DEC 08 2014

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL J. MITCHELL,

Plaintiff - Appellant,

v.

SNOWDEN, et al.,

Defendants - Appellees.

No. 13-16108

D.C. No. 2:08-cv-01658-JAM-
DAD

MEMORANDUM*

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

Submitted November 18, 2014**

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

California state prisoner Michael J. Mitchell appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging that prison officials failed to protect him in violation of the Eighth Amendment. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion a

* 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).

dismissal for failure to comply with a court order. *Pagtalunan v. Galaza*, 291 F.3d 639, 640-41 (9th Cir. 2002). We affirm.

The district court did not abuse its discretion in dismissing Mitchell's action because Mitchell failed to comply with the court's order to file a response to defendants' motion for summary judgment despite being afforded ample time to do so and being warned that failure to do so could result in dismissal of his action. *See id.* at 642-43 (discussing five factors to consider in deciding whether to dismiss for failure to comply with a court order).

The district court did not abuse its discretion in denying Mitchell's motions for appointment of counsel because Mitchell failed to demonstrate exceptional circumstances. *See Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991) (setting forth standard of review and explaining "exceptional circumstances" requirement).

We treat the document Mitchell filed on July 11, 2014 (docket No. 24) as an untimely reply brief and sua sponte grant Mitchell permission to file a late brief. The Clerk shall file the July 11, 2014 document as Mitchell's reply brief.

We do not consider any documents attached to Mitchell's reply brief that are not part of the district court record. *See Kirshner v. Uniden Corp. of Am.*, 842 F.2d 1074, 1077 (9th Cir. 1988).

Defendants' motion to strike documents attached to Mitchell's reply brief,

filed on July 31, 2014, is denied as unnecessary.

AFFIRMED.