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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL EDWARD HARKE,

Plaintiff - Appellant,

v.

ADA COUNTY SHERIFFS; et al.,

Defendants - Appellees.

No. 13-35993

D.C. No. 1:11-cv-00018-EJL

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
Edward J. Lodge, District Judge, Presiding

Submitted July 21, 2015**

Before: CANBY, BEA, and MURGUIA, Circuit Judges.

Former Ada County Jail inmate Michael Edward Harke appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging that Ada County and its officials violated his constitutional rights. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's ruling

* 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).

on cross-motions for summary judgment, *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 to Ada County and its officials because Harke failed to raise a genuine dispute of material fact as to whether defendants acted with deliberate indifference to his safety or serious medical needs when they inadvertently distributed used razors to detainees. *See Simmons v. Navajo Cnty., Ariz.*, 609 F.3d 1011, 1017-18 (9th Cir. 2010) (prison officials can only be liable where pretrial detainee shows that officials knew of and disregarded an excessive risk to pretrial detainee's health or safety; showing of medical malpractice or negligence is insufficient to establish a constitutional deprivation); *see also Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1061 (9th Cir. 2011) ("To survive summary judgment, a plaintiff must set forth non-speculative evidence of specific facts, not sweeping conclusory allegations.").

We reject as without merit Harke's arguments that the district court failed to rule on his status as a non-prisoner, or that the district court improperly assigned his action to a district judge.

We do not consider issues and arguments incorporated by reference on appeal. *See Acosta-Huerta v. Estelle*, 7 F.3d 139, 144 (9th Cir. 1992).

AFFIRMED.