

JUL 31 2015

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL D. BILLBERRY,

Plaintiff - Appellant,

v.

MEGAN J. BRENNAN,* Postmaster
General, United States Postal Service,

Defendant - Appellee.

No. 13-55385

D.C. No. 2:11-cv-04509-R-MRW

MEMORANDUM**

Appeal from the United States District Court
for the Central District of California
Manuel L. Real, District Judge, Presiding

Submitted July 21, 2015***

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

Michael D. Billberry appeals pro se from the district court's summary judgment in his employment action alleging race and sex discrimination and

* Megan J. Brennan has been substituted for her predecessor, Patrick R. Donahoe, as Postmaster General under Fed. R. App. P. 43(c)(2).

** 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).

retaliation under Title VII. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Hawn v. Exec. Jet Mgmt., Inc.*, 615 F.3d 1151, 1155 (9th Cir. 2010), and we affirm.

The district court properly granted summary judgment on Billberry's race and sex discrimination claims based on the failure to convert him to a full time position because Billberry failed to raise a genuine dispute of material fact as to whether the proffered legitimate, nondiscriminatory reasons for defendant's actions were pretextual. *See id.* at 1155-56, 1158 (setting forth framework for analyzing a discrimination claim under Title VII and noting that evidence of pretext must be specific and substantial).

The district court properly granted summary judgment on Billberry's race and sex discrimination claims based on his termination because Billberry failed to raise a genuine dispute of material fact as to whether defendant treated similarly situated employees outside of Billberry's protected class more favorably. *See id.* at 1156, 58-61 (individuals are similarly situated "when they have similar jobs and display similar conduct" (citation and internal quotation marks omitted)).

The district court properly granted summary judgment on Billberry's retaliation claims because Billberry failed to raise a genuine dispute of material fact as to whether adverse actions were taken because of his protected conduct or

whether the relevant decision makers were aware of his protected activity. *See Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1064-65 (9th Cir. 2002) (setting forth elements of a retaliation claim under Title VII and explaining that the protected activity must be the “but for” cause of the adverse action); *see also Raad v. Fairbanks N. Star Borough Sch. Dist.*, 323 F.3d 1185, 1197 (9th Cir. 2003) (decision maker’s knowledge of protected activity necessary for causation).

AFFIRMED.