

JAN 27 2016

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EUGENE A. MAUWEE, Sr.,

Plaintiff - Appellant,

v.

VALERIE OLIVAS, Lt.,

Defendant - Appellee.

No. 14-16337

D.C. No. 3:12-cv-00580-RCJ-
WGC

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Robert Clive Jones, District Judge, Presiding

Submitted January 20, 2016**

Before: CANBY, TASHIMA, and NGUYEN, Circuit Judges.

Nevada state prisoner Eugene A. Mauwee, Sr., appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging a violation of his right to religious free exercise. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, and may affirm on any basis supported by the

* 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).

record. *San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1029-30 (9th Cir. 2004). We affirm.

Summary judgment was proper on Mauwee's First Amendment claim because Mauwee failed to raise a genuine dispute of material fact as to whether the five-month deprivation of deer antlers used for Native American inmates' sweat lodge ceremonies burdened Mauwee's religious expression. *See Walker v. Beard*, 789 F.3d 1125, 1138 (9th Cir. 2015) (elements of a free exercise claim); *see also O'Lone v. Estate of Shabazz*, 482 U.S. 342, 351-52 (1987) (prisoners' free exercise rights are not violated where, although they were precluded from participating in a particular religious ceremony, they were free to perform other rituals of their religion).

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

AFFIRMED.