

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 16 2018

FOR THE NINTH CIRCUIT

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

MICHAEL WINNE,

No. 17-35448

Plaintiff-Appellant,

D.C. No. 6:15-cv-00044-DLC

v.

MEMORANDUM*

JOSH KNIGHT; et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the District of Montana

Dana L. Christensen, Chief Judge, Presiding

Submitted April 11, 2018**

Before: SILVERMAN, PAEZ, and OWENS, Circuit Judges.

Montana state prisoner Michael Winne appeals pro se from the district court's summary judgment for failure to exhaust administrative remedies in his 42 U.S.C. § 1983 action alleging excessive force. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Williams v. Paramo*, 775 F.3d 1182, 1191

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

(9th Cir. 2015). We affirm.

The district court properly granted summary judgment because Winne failed to properly exhaust his available administrative remedies as required by the Prison Litigation Reform Act, and failed to raise a genuine dispute of material fact as to whether administrative remedies were effectively unavailable to him. *See Ross v. Blake*, 136 S. Ct. 1850, 1858-60 (2016) (setting forth circumstances when administrative remedies are unavailable); *Woodford v. Ngo*, 548 U.S. 81, 84, 90-91 (2006) (holding that “proper exhaustion” is mandatory).

We reject as unsupported by the record Winne’s contention that the district court was biased.

We do not consider arguments raised for the first time on appeal. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999) (“As a general rule, we will not consider arguments that are raised for the first time on appeal.”).

AFFIRMED.