

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 22 2019

FOR THE NINTH CIRCUIT

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

NOEL RAY SMITH,

No. 17-17032

Plaintiff-Appellant,

D.C. No. 3:16-cv-04764-WHO

v.

MEMORANDUM*

BARBARA ROBERTS, Supervisor; et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of California
William Horsley Orrick, District Judge, Presiding

Submitted January 15, 2019**

Before: TROTT, TALLMAN, and CALLAHAN, Circuit Judges.

California state prisoner Noel Ray Smith appeals pro se from the district court's summary judgment in his action alleging violations of the Americans with Disabilities Act ("ADA") and Rehabilitation Act ("RA") in connection with his termination from his job assignment at the prison textile mill. We have jurisdiction

* 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).

under 28 U.S.C. § 1291. We review de novo. *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004). We affirm.

The district court properly granted summary judgment on Smith's ADA and RA claims because Smith failed to raise a genuine dispute of material fact as to whether Smith was a qualified individual with a disability, in light of the risk he posed to the health and safety of others. *See Bay Area Addiction Research & Treatment, Inc. v. City of Antioch*, 179 F.3d 725, 735-36 (9th Cir. 1999) (applying the significant risk test to ADA and RA claims); *see also Pierce v. County of Orange*, 526 F.3d 1190, 1216-17 (9th Cir. 2008) (to prevail on an ADA or RA claim, an inmate must show that the challenged prison policy is unreasonable).

The district court did not abuse its discretion by denying Smith's motion for a preliminary injunction because Smith failed to demonstrate a likelihood of success on the merits. *See Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20-21 (2008) (factors for evaluating a motion for a preliminary injunction); *Sierra Forest Legacy v. Rey*, 577 F.3d 1015, 1021 (9th Cir. 2009) (standard of review).

We do not consider arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.