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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CHARLES GREGORY REECE,

Plaintiff-Appellant,

v.

D. K. SISTO, Warden and DON MIMIS,
Plant Operation,

Defendants-Appellees.

No. 18-15517

D.C. No.
2:10-cv-00203-JAM-EFB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
John A. Mendez, District Judge, Presiding

Submitted March 5, 2019**

Before: GOODWIN, LEAVY, and SILVERMAN, Circuit Judges.

California state prisoner Charles Gregory Reece appeals pro se from the district court's summary judgment in Reece's 42 U.S.C. § 1983 action alleging that defendants subjected him to unconstitutional conditions of confinement. We have

* 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).

jurisdiction 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 because Reece failed to raise a genuine dispute of material fact as to whether he was subjected to extreme cold and denied warm clothing and bedding, or whether defendants knew of and disregarded an excessive risk to his health and safety. *See Farmer v. Brennan*, 511 U.S. 825, 834, 837 (1994) (to challenge his conditions of confinement, a prisoner must show both that he was subjected to a sufficiently serious deprivation and that defendants knew of and disregarded an excessive risk to his health or safety).

Defendants' motion to strike Exhibits 3, 4, 5, 6, and 7 to Reece's Opening Brief (Docket Entry No. 16) is GRANTED.

AFFIRMED.

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Reece v. Sisto, 18-15517

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SILVERMAN, Circuit Judge, concurring in part and dissenting in part:

I concur in the Memorandum affirming summary judgment in favor of defendant Sisto. However, I would reverse the grant of summary judgment in favor of defendant Mims for the reasons stated by Magistrate Judge Edmund F. Brennan in his Findings and Recommendations dated September 6, 2017.