

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 24 2019

FOR THE NINTH CIRCUIT

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

GORDON MCMAIN,

Plaintiff-Appellant,

v.

COLETTE S. PETERS, Director O.D.O.C.;
et al.,

Defendants-Appellees,

and

J. TAYLOR, Grievance Coordinator SRCI;
SMITH, BHS Manager SRCI,

Defendants.

No. 18-35766

D.C. No. 2:13-cv-01632-AA

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Ann L. Aiken, District Judge, Presiding

Submitted July 15, 2019**

Before: SCHROEDER, SILVERMAN, and CLIFTON, Circuit Judges.

* 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).

Former Oregon state prisoner Gordon McMain appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging medical deliberate indifference and equal protection claims. We have 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 for defendant Shelton on McMain's medical deliberate indifference claim because McMain failed to raise a genuine dispute of material fact as to whether defendant Shelton was deliberately indifferent by denying McMain testosterone injections. *See id.* at 1057-60 (a prison official is deliberately indifferent only if he or she knows of and disregards an excessive risk to an inmate's health; medical malpractice, negligence, or a difference of opinion concerning the course of treatment does not amount to deliberate indifference).

The district court properly granted summary judgment for defendant Shelton on McMain's equal protection claim because McMain failed to raise a genuine dispute of material fact as to whether the denial of testosterone injections lacked a rational basis. *See Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (per curiam) (elements of "class of one" equal protection claim).

We do not consider matters not specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.