

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 3 2020

FOR THE NINTH CIRCUIT

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

FRANK GALVAN,

Plaintiff-Appellee,

v.

KENNETH E. DUFFIE, Dentist,

Defendant-Appellant.

No. 19-55531

D.C. No.

5:13-cv-01492-MWF-PJW

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Michael W. Fitzgerald, District Judge, Presiding

Argued and Submitted March 2, 2020
Pasadena, California

Before: KLEINFELD and CALLAHAN, Circuit Judges, and CHRISTENSEN,**
District Judge.

Defendant-Appellant appeals from the district court's order denying him qualified immunity in Plaintiff-Appellee's 42 U.S.C. § 1983 action. We have jurisdiction over this interlocutory appeal. *Knox v. Sw. Airlines*, 124 F.3d 1103,

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

** The Honorable Dana L. Christensen, United States Chief District Judge for the District of Montana, sitting by designation.

1106 (9th Cir. 1997). Reviewing de novo, *Robinson v. Prunty*, 249 F.3d 862, 865–66 (9th Cir. 2001), we affirm on the same basis as the district court.¹

The district court did not err in denying qualified immunity where Defendant-Appellant removed Plaintiff-Appellee’s wisdom tooth over his objection. Existing precedent at the time of the procedure placed the constitutional question beyond debate. *See White v. Pauly*, 137 S. Ct. 548, 551 (2017). “[A] competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment.” *Cruzan v. Dir., Mo. Dept. of Health*, 497 U.S. 261, 277–78 (1990). Furthermore, and specific to the prison context, a Fourteenth Amendment violation arises where “prison medical personnel perform[] major medical procedures upon the body of any inmate, without his consent and over his known objections, that were not required to preserve his life or further a compelling interest of imprisonment or prison security.” *Runnels v. Rosendale*, 499 F.2d 733, 735 (9th Cir. 1974).

Defendant-Appellant argues that, in defining the right at issue, the district court failed to account for all the various facts and circumstances, including the

¹ Plaintiff-Appellee argues for the first time on appeal that the panel could affirm, alternatively, by finding that a state actor in Defendant-Appellant’s position is categorically ineligible for qualified immunity. The panel declines to entertain an argument not presented to the district court in the first instance. Accordingly, Defendant-Appellant’s motion to supplement the record with material that purportedly undercuts this new argument is DENIED.

designated tooth number, involved in the dental extraction. The panel disagrees. Under the “clearly established” prong of qualified immunity analysis, a “right’s contours [are] sufficiently definite [if] any reasonable official in the defendant’s shoes would have understood he was violating it.” *Plumhoff v. Rickard*, 572 U.S. 765, 778–79 (2014).

Here, the contours of the right, as defined by the district court, are sufficiently definite. Any reasonable official in Defendant-Appellant’s shoes would have understood he was violating Plaintiff-Appellee’s Fourteenth Amendment right by performing the tooth extraction—an unconsented medical procedure not required to preserve life or advance penological interests. Therefore, Defendant-Appellant had “fair notice that [his] conduct was unlawful,” based on the clearly established law. *See Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018).

AFFIRMED.