

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 23 2025

FOR THE NINTH CIRCUIT

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

KENYATTA QUINN MITCHELL,

No. 23-55164

Plaintiff-Appellant,

D.C. No. 2:20-cv-05935-JFW-ADS

v.

MEMORANDUM*

D. MELO, Officer: individual and official capacity; J. ONGARO, Officer; individual capacity and official capacity; T. PACHECO, Officer; individual and official capacity; A. IBARRA, Correctional Officer, individual and official capacity; SIXT, Correctional Officer, individual and official capacity,

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

Submitted April 22, 2025**

Before: GRABER, H.A. THOMAS, and JOHNSTONE, Circuit Judges.

Kenyatta Quinn Mitchell appeals pro se from the district court's judgment

* 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).

dismissing for failure to exhaust administrative remedies his 42 U.S.C. § 1983 action alleging First and Eighth Amendment claims. We review for clear error the district court's factual findings relevant to its exhaustion determination, and we review de novo the district court's legal rulings on exhaustion. *Albino v. Baca*, 747 F.3d 1162, 1171 (9th Cir. 2014) (en banc). We affirm.

The district court properly dismissed Mitchell's action following an evidentiary hearing because it found that Mitchell failed to exhaust administrative remedies and that Mitchell's administrative remedies were not effectively unavailable. *See Ross v. Blake*, 578 U.S. 632, 638, 642-44 (2016) (explaining that an inmate must exhaust "such administrative remedies as are available" before bringing suit, and describing limited circumstances under which administrative remedies are effectively unavailable).

Because Mitchell did not object to the magistrate judge's report and recommendation, we do not consider any challenge to the district court's factual findings concerning exhaustion. *See Miranda v. Anchondo*, 684 F.3d 844, 848 (9th Cir. 2012) (explaining that failure to object to a magistrate judge's factual findings forfeits the right to challenge those findings).

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).

All pending motions are denied.

AFFIRMED.