

AUG 01 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CHRISTOPHER DUPREE,

Plaintiff - Appellant,

v.

EDWARD S. ALAMEIDA, Jr., CDC  
Director; et al.,

Defendants - Appellees,

and

ERNEST ROE,

Defendant.

No. 06-15694

D.C. No. CV-02-01435-DFL/PAN

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
David F. Levi, District Judge, Presiding

Submitted July 22, 2008\*\*

Before: B. FLETCHER, THOMAS, and WARDLAW Circuit Judges.

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Christopher DuPree, a California state prisoner, appeals pro se the district court's summary judgment for defendants in his 42 U.S.C. § 1983 action alleging defendants improperly diverted his veterans' disability benefits from his inmate trust account. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo, *Shakur v. Schriro*, 514 F.3d 878, 883 (9th Cir. 2008), and affirm.

The district court properly concluded that DuPree's claim for injunctive relief is moot because the possibility of a future diversion of funds is too remote to preserve a live case or controversy. *See Dufresne v. Veneman*, 114 F.3d 952, 955 (9th Cir. 1997). The record indicates that DuPree's inmate trust account was reimbursed, that the improper diversion of funds was the result of human error, and that the California Department of Corrections and Rehabilitation has established a procedure to correct future errors.

The district court properly dismissed his claims for damages because "state officials, sued in their official capacities, are not 'persons' within the meaning of § 1983 and are therefore generally entitled to Eleventh Amendment immunity." *Flint v. Dennison*, 488 F.3d 816, 825 (9th Cir. 2007). DuPree cannot for the first time on appeal assert a claim for damages against prison officials in their individual capacity.

**AFFIRMED.**