

SEP 27 2007

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BENJIE D. BROOKINS,

Plaintiff - Appellant,

v.

CAL TERHUNE; et al.,

Defendants - Appellees.

No. 06-15790

D.C. No. CV-03-00916-GEB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Garland E. Burrell, District Judge, Presiding

Submitted September 24, 2007**

Before: CANBY, TASHIMA, and RAWLINSON, Circuit Judges.

Benjie D. Brookins, a California state prisoner, appeals pro se from the district court's summary judgment in favor of defendants in Brookins' 42 U.S.C. § 1983 action alleging that California prison officials improperly classified him as

* 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).

a gang member. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Barnett v. Centoni*, 31 F.3d 813, 815 (9th Cir. 1994) (per curiam), and we affirm.

The district court properly granted summary judgment on Brookins' due process claim because Brookins failed to show that he was deprived of a liberty interest, or subjected to an atypical and significant hardship in the terms of his confinement. *See Sandin v. Conner*, 515 U.S. 472, 483-87 (1995).

The district court properly granted summary judgment on Brookins' Eighth Amendment failure-to-protect claim because Brookins did not raise a triable issue as to whether defendants were deliberately indifferent to his safety. *See Farmer v. Brennan*, 511 U.S. 825, 837-39 (1994).

Brookins' remaining contentions are unpersuasive.

AFFIRMED.