

APR 30 2008

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN PATRICK MCCLURE,

Plaintiff - Appellant,

v.

TUCKER; MILLWEE, STEVE  
KROBOWSKI, sued in his individual &  
official capacity; JOHNSON, sued in  
his/her individual & official capacity;  
PATRICIA STAPLER, sued in her  
individual & official capacity,

Defendants - Appellees.

No. 07-15377

D.C. No. CV-05-01195-JAT

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
James A. Teilborg, District Judge, Presiding

Submitted April 22, 2008\*\*

Before: GRABER, FISHER, and BERZON, Circuit Judges.

---

\* 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).

John Patrick McClure, an Arizona state prisoner, appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging prison officials violated his Eighth Amendment rights by acting with deliberate indifference to his medical needs and inflicting cruel and unusual punishment. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo. *Sanchez v. Vild*, 891 F.2d 240, 241-42 (9th Cir. 1989). We affirm.

The district court properly granted summary judgment on McClure's deliberate indifference claim because there was no genuine issue of material fact as to whether the treatment chosen by prison officials was medically unacceptable. *See id.* at 242 (holding that a difference of opinion about the best course of medical treatment does not amount to deliberate indifference).

The district court properly granted summary judgment on McClure's claims regarding tuberculosis testing and food tampering because McClure did not offer evidence that prison officials poisoned him. Preventing disease and protecting the health of inmates are legitimate penological goals. *See, e.g., Thompson v. City of Los Angeles*, 885 F.2d 1439, 1447 (9th Cir. 1989).

McClure's remaining contentions are unpersuasive.

**AFFIRMED.**