

MAR 24 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAMES MICKEY,

Plaintiff - Appellant,

v.

A. SKEELS,

Defendant - Appellee.

No. 06-15350

D.C. No. CV-03-05006-REC/SMS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Robert E. Coyle, Senior Judge, Presiding

Submitted March 18, 2008**

Before: CANBY, T.G. NELSON, and BEA, Circuit Judges.

James Mickey, a California state prisoner, appeals pro se from the district court's summary judgment in favor of FBI Agent Skeels in his civil rights action alleging due process violations in connection with the seizure of his property

* 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).

during a search of his prison cell. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's order granting summary judgment. *Southern Oregon Barter Fair v. Jackson Cty*, 372 F.3d 1128, 1133 (9th Cir. 2004). A district court's decision to deny a request for additional discovery pursuant to Fed. R. Civ. P. 56(f) is reviewed for an abuse of discretion. *Margolis v. Ryan*, 140 F.3d 850, 853 (9th Cir. 1998). We affirm.

The district court properly determined that Mickey had no procedural due process right to a predeprivation hearing because the challenged search and seizure occurred in the course of a criminal investigation, and adequate postdeprivation remedies were available. *See Hudson v. Palmer*, 468 U.S. 517, 533 (1984) (holding no Fourteenth Amendment due process violation where “predeprivation process is impracticable” provided that “a meaningful postdeprivation remedy for the loss is available”); *Raditch v. U.S.*, 929 F.2d 478, 481 (9th Cir. 1991) (“Although *Hudson* involved § 1983 and the Fourteenth Amendment, the same due process principles apply to the federal government through the Fifth Amendment.”); *see also* FED. R. CRIM. P. 41(g) (providing a cause of action against the United States for the return of wrongfully seized property).

The district court properly denied Mickey's request for additional discovery because Mickey failed to show how the evidence he sought would preclude summary judgment. *See Margolis*, 140 F.3d at 853.

AFFIRMED.