

JUL 07 2008

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANTHONY JOSEPH AMARA,

Plaintiff - Appellant,

v.

JOSEPH ARPAIO,

Defendant - Appellee.

No. 06-17037

D.C. No. CV-05-02684-SMM

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
Stephen M. McNamee, District Judge, Presiding

Submitted June 18, 2008\*\*

Before: REINHARDT, LEAVY, and CLIFTON, Circuit Judges.

Anthony Joseph Amara appeals pro se from the district court's dismissal of his 42 U.S.C. § 1983 civil rights action for failure to exhaust administrative

---

\* 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).

remedies. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Roles v. Maddox*, 439 F.3d 1016, 1017 (9th Cir. 2006), and we affirm.

The district court properly dismissed Amara's complaint without prejudice because Amara failed to exhaust administrative remedies as required by the Prison Litigation Reform Act. *See McKinney v. Carey*, 311 F.3d 1198, 1199 (9th Cir. 2002) (holding that exhaustion under 42 U.S.C. § 1997e(a) must occur prior to the commencement of the action); *see also Wyatt v. Terhune*, 315 F.3d 1108, 1119-20 (9th Cir. 2003) (holding that proper remedy for failure to exhaust is dismissal of the claim without prejudice).

Amara's remaining contentions are unpersuasive.

Amara's motion for adjudication on the merits is denied as moot.

**AFFIRMED.**