

SEP 27 2007

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOE TURNEY,

Plaintiff - Appellant,

v.

ANA RAMIREZ PALMER, Warden; et
al.,

Defendants - Appellees.

No. 06-15140

D.C. No. CV-02-01235-GGH

MEMORANDUM*

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

Submitted September 24, 2007**

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

Joe Turney, a California state prisoner, appeals pro se from the district court's summary judgment for defendants in his 42 U.S.C. § 1983 action alleging that prison officials delayed his hernia surgery in violation of the Eighth Amendment. We have jurisdiction under 28 U.S.C. § 1291. We review de novo.

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

Toguchi v. Chung, 391 F.3d 1051, 1056 (9th Cir. 2004). We affirm.

The district court properly granted summary judgment because Turney did not raise a genuine issue of material fact as to whether defendants acted with deliberate indifference in treating his hernia. *See id.* A difference in opinion between Turney and the prison physicians about the offered alternatives and the preferred course of medical treatment does not constitute an Eighth Amendment violation. *See id.* at 1058.

We grant Turney's motion to file a late reply brief and instruct the Clerk to file the brief received on July 13, 2006.

AFFIRMED.