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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>KEVIN TYRONE FLEMINGS,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>S. RYAN; et al.,</p> <p>Defendants - Appellees.</p>
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No. 06-56630

D.C. No. CV-06-04186-GAF

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Gary A. Feess, District Judge, Presiding

Submitted December 3, 2007\*\*

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Kevin Tyrone Flemings, a California state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging that prison officials were deliberately indifferent to his medical needs in violation of the Eighth Amendment when they withheld a pair of sneakers that he mail-ordered

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\* 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).

to treat his foot pain. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo the district court's sua sponte dismissal of a complaint under 28 U.S.C. § 1915A for failure to state a claim, *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000), and we affirm.

The district court properly concluded that Flemings's allegations were insufficient to state a claim under the Eighth Amendment because they do not demonstrate that any defendant acted with deliberate indifference to his medical needs. *See Hallett v. Morgan*, 296 F.3d 732, 744 (9th Cir. 2002) (“[T]he Eighth Amendment is violated when prison officials demonstrate deliberate indifference to serious medical needs.”).

Furthermore, Flemings did not allege that defendants prevented him from acquiring a different pair of sneakers that satisfied their security concerns. *See id.* at 745 (“[The Eighth Amendment] requires neither that prisons be comfortable nor that they provide every amenity that one might find desirable.”).

We deny Flemings's motion for injunctive relief.

**AFFIRMED.**