

DEC 28 2007

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARCO A. CARMONA,

Plaintiff - Appellant,

v.

JOE MCGRATH, Warden; et al.,

Defendants - Appellees.

No. 06-16645

D.C. No. CV-05-02219-MHP

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Marilyn H. Patel, District Judge, Presiding

Submitted December 3, 2007**

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

Marco A. Carmona, 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 used excessive force and acted with deliberate indifference to his serious medical needs in connection with transferring Carmona to a different

* 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).

prison cell. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo, *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000) (dismissal pursuant to 28 U.S.C. § 1915A); *Barnett v. Centoni*, 31 F.3d 813, 815 (9th Cir. 1994) (grant of summary judgment), and we affirm.

The district court properly granted summary judgment in favor of defendant Ater because Carmona failed to raise a genuine issue of material fact as to whether Ater unreasonably authorized the use of force against him. *See Clement v. Gomez*, 298 F.3d 898, 903 (9th Cir. 2002) (“Force does not amount to a constitutional violation . . . if it is applied in a good faith effort to restore discipline and order and not maliciously and sadistically for the very purpose of causing harm.”) (internal citation and quotation marks omitted).

The district court properly dismissed Carmona’s action pursuant to 28 U.S.C. § 1915A(b) because Carmona failed to allege any constitutional violation by defendants.

AFFIRMED.