

JAN 15 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TIMOTHY BRYAN BROOKS,

Plaintiff - Appellant,

v.

DEUEL VOCATIONAL INSTITUTE; et
al.,

Defendants - Appellees.

No. 07-15566

D.C. No. CV-02-02166-MCE

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Morrison C. England, District Judge, Presiding

Submitted December 17, 2008**

Before: WALLACE, TROTT, and RYMER, Circuit Judges.

Timothy Bryan Brooks, a California prisoner, appeals pro se from the
district court's summary judgment for defendants in his 42 U.S.C. § 1983 action

* 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).

alleging that prison officials acted with deliberate indifference to his safety and serious medical needs in violation of the Eighth Amendment. We have jurisdiction pursuant to 28 U.S.C. § 1291. Our review is de novo. *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004). We affirm.

The district court properly granted summary judgment on Brooks's failure-to-protect claim because Brooks did not raise a triable issue of material fact as to whether defendant Millingar was deliberately indifferent to his safety. *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994) (holding that "a prison official cannot be found liable [for deliberate indifference] unless the official knows of and disregards an excessive risk to inmate health or safety").

The district court properly granted summary judgment for defendants Harman and Yin Hui because Brooks did not raise a triable issue of material fact as to whether these defendants were deliberately indifferent to Brooks's serious medical needs. *See id.*; *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) ("[A] complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment."); *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (stating prison officials may manifest deliberate indifference to a prisoner's medical needs if they deny, delay or intentionally interfere with medical treatment).

Brooks's remaining contentions are unpersuasive.

AFFIRMED.