

JAN 15 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EDWARD R. WHITTINGTON,

Plaintiff - Appellant,

v.

KING COUNTY DEPARTMENT OF
CORRECTIONS; et al.,

Defendants - Appellees.

No. 07-35014

D.C. No. CV-05-01914-RSM

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Ricardo S. Martinez, District Judge, Presiding

Submitted December 17, 2008**

Before: WALLACE, TROTT and RYMER, Circuit Judges.

Edward R. Whittington appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action challenging his conditions of confinement at King County Jail. We have jurisdiction pursuant to 28 U.S.C. § 1291. Our

* 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).

review is de novo. *Hutchinson v. United States*, 838 F.2d 390, 392 (9th Cir. 1988).

We affirm.

Whittington failed to raise a genuine issue of material fact as to whether unsanitary conditions in the jail caused the staph infections he contracted. *See Van Ort v. Estate of Stanewich*, 92 F.3d 831, 837 (9th Cir. 1996) (the policy or custom must be the proximate cause of the section 1983 injury).

AFFIRMED.