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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MICHAEL ALEXANDRE PINKSTON,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>DANIEL R. FIERRO, individually; et al.,</p> <p>Defendants - Appellees.</p>
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No. 07-16047

D.C. No. CV-00-06193-LJO

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O’Neill, District Judge, Presiding

Submitted February 18, 2009**

Before: BEEZER, FERNANDEZ and W. FLETCHER, Circuit Judges.

Michael Alexandre Pinkston, 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 correctional officers applied excessive force in violation of the

* 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).

Eighth Amendment by subjecting him to prolonged exposure to pepper spray. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo, *Johnson v. City of Seattle*, 474 F.3d 634, 638 (9th Cir. 2007), and we affirm.

The district court properly granted summary judgment because Pinkston failed to demonstrate that, under the circumstances, the officers acted “maliciously and sadistically for the very purpose of causing harm.” *Clement v. Gomez*, 298 F.3d 898, 903-04 (9th Cir. 2002); *Bias v. Moynihan*, 508 F.3d 1212, 1218 (9th Cir. 2007) (“In opposing summary judgment, a nonmoving party must . . . designate specific facts showing that there is a genuine issue for trial.”).

Pinkston’s request for judicial notice is denied. *See Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1025 n.2 (9th Cir. 2006) (declining to take judicial notice of documents that were not relevant to the resolution of the appeal).

AFFIRMED.