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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CHARLES LOWELL KENTZ,

Plaintiff - Appellant,

v.

EARLENE SMITH, Employee of Taft
Correctional Institution; et al.,

Defendants - Appellees.

No. 07-16579

D.C. No. CV-04-06066-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.

Federal prisoner Charles Lowell Kentz appeals pro se from the district court's summary judgment in favor of Earlene Smith in Kentz's action pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S.

* 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).

388 (1971), alleging that Smith, a librarian at Taft Correctional Institution, discriminated against him when she declined to assign him as a law library clerk. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's grant of summary judgment, *Serrano v. Francis*, 345 F.3d 1071, 1082 (9th Cir. 2003), and we affirm.

Smith presented evidence that she declined to assign Kentz as a law library clerk due to his harassing behavior toward her. The district court properly granted summary judgment because Kentz failed to produce admissible evidence creating a genuine issue of material fact as to whether Smith acted with a discriminatory intent. *See id.*

AFFIRMED.