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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WAYMON MICKIANGELO BERRY, III,

Plaintiff - Appellant,

v.

JEFFREY L. BAKER, CO, Mule Creek
State Prison; et al.,

Defendants - Appellees.

No. 07-17397

D.C. No. CV-06-00343-FCD

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Frank C. Damrell, Jr., District Judge, Presiding

Submitted March 18, 2009**

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Waymon Mickiangelo Berry, III, a California state prisoner, appeals pro se from the district court's judgment in his 42 U.S.C. § 1983 action alleging that

* 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).

defendants engaged in a conspiracy and retaliated against him for filing grievances against prison officials. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo, *Barnett v. Centoni*, 31 F.3d 813, 815 (9th Cir. 1994) (per curiam), and we affirm.

The district court properly granted summary judgment on Berry's First Amendment retaliation claim because Berry did not raise a genuine issue of material fact as to whether his placement in administrative segregation, his disciplinary charge, and his transfer to another prison facility failed to advance a legitimate penological interest. *See Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005) (describing elements of a First Amendment retaliation claim).

It follows that the district court properly granted summary judgment on Berry's conspiracy claim. *See Woodrum v. Woodward County*, 866 F.2d 1121, 1126 (9th Cir. 1989) (explaining that a plaintiff must show a deprivation of his constitutional rights to establish a conspiracy).

Berry's remaining contentions are unpersuasive.

AFFIRMED.