

JUL 28 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GARY C. TANNER,

Plaintiff - Appellant,

v.

DR. KENNEY; et al.,

Defendants - Appellees.

No. 08-35510

D.C. No. 2:07-cv-00713-JCC

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
John C. Coughenour, District Judge, Presiding

Submitted July 14, 2009**

Before: SCHROEDER, THOMAS, and WARDLAW, Circuit Judges.

Gary C. Tanner, a Washington state 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 serious medical needs in violation of the Eighth Amendment. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004). We affirm.

The district court properly dismissed Tanner’s claims against defendants Quinn and Kollasch because “[t]here is no respondeat superior liability under section 1983.” *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

The district court properly granted summary judgment on the remaining claims because Tanner failed to raise a genuine issue of material fact as to whether defendants were deliberately indifferent in treating his lower back and ankle pain. *See Toguchi*, 391 F.3d at 1058 (explaining that a difference in opinion about the preferred course of medical treatment is insufficient, as a matter of law, to establish deliberate indifference).

Tanner’s remaining contentions are unpersuasive.

AFFIRMED.