

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 31 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ALLEN L.M. DOBSHINSKY,

Plaintiff - Appellant,

v.

PLEASANT VALLEY STATE PRISON,

Defendant - Appellee.

No. 08-15876

D.C. No. 1:06-CV-01285-OWW-
DLB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Oliver W. Wanger, District Judge, Presiding

Submitted August 20, 2009**

Before: WALLACE, HAWKINS, and THOMAS, Circuit Judges.

Allen L.M. Dobshinsky, a California state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action pursuant to 28 U.S.C. § 1915A for failure to state a claim. We have jurisdiction under 28 U.S.C.

* 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).

§ 1291. We review de novo, *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000), and we affirm.

The district court properly determined that Dobshinsky's allegations regarding his classification score and resulting placement at a high security facility failed to state a constitutional claim because no federal due process right is implicated by a prison's classification and transfer decisions. *See Meachum v. Fano*, 427 U.S. 215, 224-25 (1976). Further, the amended complaint did not allege facts indicating that Dobshinsky's classification and placement posed an atypical and significant hardship in relation to the ordinary incidents of prison life, or that the classification "will invariably affect the duration of his sentence." *Myron v. Terhune*, 476 F.3d 716, 718 (9th Cir. 2007).

Dobshinsky's allegations failed to state an Eighth Amendment claim because "the mere act of classification does not amount to an infliction of pain . . . condemned by the Eighth Amendment." *See id.* at 719.

Finally, the amended complaint did not state an equal protection claim because it did not allege facts indicating that Dobshinsky was "treated differently from similarly situated prisoners." *Pierce v. County of Orange*, 526 F.3d 1190, 1225 (9th Cir. 2008).

AFFIRMED.