

OCT 05 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GREGORY McKINNEY,

Plaintiff - Appellant,

v.

T. CASEY and S. BUENTIEMPO,

Defendants - Appellees.

No. 09-17008

D.C. No. 1:04-cv-06030-SMM

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Stephen M. McNamee, District Judge, Presiding

Submitted September 13, 2010\*\*

Before: SILVERMAN, CALLAHAN, and N.R. SMITH, Circuit Judges.

California state prisoner Gregory McKinney appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging denial of adequate outdoor exercise. We have jurisdiction under 28 U.S.C. § 1291. We

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

review de novo. *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004). We affirm.

The district court properly granted summary judgment because McKinney failed to raise a genuine issue of material fact as to whether defendants caused the alleged denial of exercise. *See Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988) (an official is liable under section 1983 only “if he does an affirmative act, participates in another’s affirmative acts, or omits to perform an act which he is legally required to do that *causes* the deprivation” of which plaintiff complains) (citation and internal quotation marks omitted).

The district court did not abuse its discretion in denying McKinney’s motion for appointment of counsel because he failed to establish exceptional circumstances. *See Agyeman v. Corr. Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004) (setting forth standard of review).

McKinney’s remaining contentions are unpersuasive.

**AFFIRMED.**