

MAR 25 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SERAFIN REYES, JR.,

Plaintiff - Appellant,

v.

CHARLES L. RYAN; et al.,

Defendants - Appellees.

No. 09-17717

D.C. No. 2:09-cv-02020-SMM-
DKD

MEMORANDUM*

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

Submitted March 8, 2011**

Before: FARRIS, O'SCANNLAIN, and BYBEE, Circuit Judges.

Serafin Reyes, Jr., an Arizona state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. §1983 action alleging that defendants were deliberately indifferent to his medical needs by discontinuing a special

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

diabetic diet. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under 28 U.S.C. § 1915A. *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). We may affirm the judgment on any ground supported by the record. *Trimble v. City of Santa Rosa*, 49 F.3d 583, 584 (9th Cir. 1995) (per curiam). We affirm.

Dismissal of the deliberate indifference claim was proper because Reyes failed to allege that defendants knew of and disregarded an excessive risk of harm to his health. *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

The district court properly dismissed the Americans with Disabilities Act claim because Reyes failed to allege that prison officials discriminated against him or denied him the benefits of a program, service or activity on the basis of his diabetes. *See Duffy v. Riveland*, 98 F.3d 447, 455 (9th Cir. 1996).

Reyes's remaining contentions are unpersuasive.

AFFIRMED.