

OCT 12 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>GREGORY SYLVESTER RIDEAU, JR.,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>LARRY SMALL, Warden; et al.,</p> <p>Defendants - Appellees.</p>
--

No. 09-56216

D.C. No. 3:09-cv-00535-W-PCL

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Thomas J. Whelan, District Judge, Presiding

Submitted September 13, 2010**

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

Gregory Sylvester Rideau, Jr., a California state prisoner, appeals pro se from the district court’s judgment dismissing his 42 U.S.C. § 1983 action alleging deliberate indifference to serious medical needs. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal for failure to state a claim, *Barren*

* 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).

v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998) (order), and for failure to exhaust, *Wyatt v. Terhune*, 315 F.3d 1108, 1117 (9th Cir. 2003). We affirm.

The district court properly dismissed the claim that defendants denied Rideau a therapeutic medical diet beneficial for his heart condition because an inmate's disagreement with his physicians or prison officials regarding the course of treatment does not constitute deliberate indifference to serious medical needs. *See Toguchi v. Chung*, 391 F.3d 1051, 1058 (9th Cir. 2004).

The district court properly dismissed the claim that defendants denied Rideau single cell status and other treatment for his sleep disorder because, as he appears to concede on appeal, Rideau did not exhaust his administrative remedies as to this claim before filing suit. *See McKinney v. Carey*, 311 F.3d 1198, 1199 (9th Cir. 2002) (per curiam) (requiring dismissal without prejudice where prisoner does not exhaust his administrative remedies prior to filing suit).

Rideau's remaining contentions, including those concerning a claim under the Americans with Disabilities Act that he tried to allege, are unpersuasive.

AFFIRMED.