

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 21 2013

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

ISIAH LUCAS, Jr.,

Plaintiff - Appellant,

v.

M. MIRANDA, Sergeant; et al.,

Defendants - Appellees.

No. 12-15661

D.C. No. 4:07-cv-01673-CW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Claudia Wilken, Chief Judge, Presiding

Submitted May 14, 2013**

Before: LEAVY, THOMAS, and MURGUIA, Circuit Judges.

Former California state prisoner Isiah Lucas, Jr., appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging deliberate indifference in connection with his upper bunk assignment. We have

* 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).

jurisdiction under 28 U.S.C. § 1291. We review de novo, *Garcia v. County of Merced*, 639 F.3d 1206, 1208 (9th Cir. 2011), and we affirm.

The district court properly granted summary judgment on the basis of qualified immunity because it would not have been clear to reasonable prison officials in defendants' position that following prison housing protocols prioritizing epileptic inmates for lower bunks would amount to deliberate indifference. *See Norwood v. Vance*, 591 F.3d 1062, 1068 (9th Cir. 2010) ("The relevant, dispositive inquiry . . . is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." (emphasis, citation and internal quotation marks omitted)).

AFFIRMED.