

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 20 2017

FOR THE NINTH CIRCUIT

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

DENNIS WAYNE MIZE,

No. 16-17074

Plaintiff-Appellant,

D.C. No. 2:14-cv-01558-MCE-
CKD

v.

S. TSENG, et al.,

MEMORANDUM*

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of California
Morrison C. England, Jr., District Judge, Presiding

Submitted November 15, 2017**

Before: CANBY, TROTT, and GRABER, Circuit Judges.

California state prisoner Dennis Wayne Mize appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging deliberate indifference to his serious medical needs. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal on the basis of qualified immunity.

* 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). Mize's request for oral argument, set forth in his opening brief, is denied.

Nelson v. Heiss, 271 F.3d 891, 893 (9th Cir. 2001). We affirm.

The district court properly dismissed Mize’s Eighth Amendment claim on the basis of qualified immunity because defendants’ conduct did not violate clearly established law. *See Pearson v. Callahan*, 555 U.S. 223, 232 (2009) (defendant is entitled to qualified immunity unless the conduct at issue violated a clearly established constitutional right); *Hope v. Pelzer*, 536 U.S. 730, 739 (2002) (“For a constitutional right to be clearly established, its contours must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.” (citation and internal quotation marks omitted)).

Mize’s request for appointment of counsel, set forth in his opening brief, is denied.

AFFIRMED.