

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 22 2018

FOR THE NINTH CIRCUIT

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

STEPHEN A. CHERRY,

Plaintiff-Appellant,

v.

DEWAYNE SHEDD; et al.,

Defendants-Appellees.

No. 16-35921

D.C. No. 3:10-cv-00271-EJL-REB

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Idaho  
Edward J. Lodge, District Judge, Presiding

Submitted February 13, 2018\*\*

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

Idaho state prisoner Stephen A. Cherry appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging an access-to-courts claim. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Brodheim v. Cry*, 584 F.3d 1262, 1267 (9th Cir. 2009). We affirm.

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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).

The district court properly granted summary judgment on Cherry's access-to-courts claim against defendant Higgins because Cherry failed to raise a genuine dispute of material fact as to whether he suffered an actual injury as a result of defendant Higgins's misplacement of his legal materials. *See Lewis v. Casey*, 518 U.S. 343, 348-53 (1996) (access-to-courts claim requires the plaintiff to show that the defendants' conduct caused actual injury to a non-frivolous legal claim); *see also Silva v. DiVittorio*, 658 F.3d 1090, 1101-04 (9th Cir. 2011) (discussing access-to-courts claims arising from "active interference"), *overruled on other grounds as stated by Richey v. Dahne*, 807 F.3d 1202, 1209 n.6 (9th Cir. 2015).

**AFFIRMED.**