

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 21 2021

FOR THE NINTH CIRCUIT

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

DEONTE VONDELL SPICER,

No. 20-55434

Plaintiff-Appellant,

D.C. No. 5:17-cv-00717-CJC-ADS

v.

MEMORANDUM*

J. BUNSOLD, UA Officer or CO, in
individual and official capacity; et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
Cormac J. Carney, District Judge, Presiding

Submitted July 19, 2021**

Before: SCHROEDER, SILVERMAN, and MURGUIA, Circuit Judges.

Federal prisoner Deonte Vondell Spicer appeals pro se from the district court's summary judgment for failure to exhaust administrative remedies in his action brought under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), alleging an Eighth Amendment claim. We have

* 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).

jurisdiction under 28 U.S.C. § 1291. We review de novo, *Albino v. Baca*, 747 F.3d 1162, 1168 (9th Cir. 2014) (en banc), and we affirm.

The district court properly granted judgment because Spicer failed to exhaust his administrative remedies, and failed to raise a genuine dispute of material fact as to whether administrative remedies were effectively unavailable. *See id.* at 1172 (setting forth exhaustion framework under the Prison Litigation Reform Act (“PLRA”)); *see also Ross v. Blake*, 136 S. Ct. 1850, 1858-60 (2016) (describing limited circumstances in which administrative remedies are unavailable); *Porter v. Nussle*, 534 U.S. 516, 524 (2002) (requiring PLRA exhaustion for federal prisoners’ *Bivens* actions).

We do not consider Spicer’s argument, raised for the first time on appeal, that his due process rights were violated. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999) (“As a general rule, we will not consider arguments that are raised for the first time on appeal.”).

We reject as unsupported by the record Spicer’s contention that he was prevented from seeking discovery before the district court.

Spicer’s pending motions are denied.

AFFIRMED.