NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TERRANCE JON IRBY, Plaintiff-Appellant, v. CLIFFORD JOHNSON, Doctor, Clallam Bay Corrections Center; STEPHEN SINCLAIR, Former Secretary, Department of Corrections; CHERYL STRANGE, Secretary, Department of Corrections; AMY MOK, Doctor; MOORE, Provider, Washington State Corrections Center, Defendants-Appellees.	No. 22-35033 D.C. No. 3:21-cv-05605-BJR MEMORANDUM[*]

Appeal from the United States District Court
for the Western District of Washington
Barbara Jacobs Rothstein, District Judge, Presiding

Submitted November 15, 2022[**]

Before: CANBY, CALLAHAN, and BADE, Circuit Judges.

Washington state prisoner Terrance Jon Irby appeals pro se from the district

[*] 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).

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 the district court's dismissal under 28 U.S.C. § 1915A. *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). We affirm.

The district court properly dismissed Irby's deliberate indifference claims because Irby failed to allege facts sufficient to show that defendants knew of and disregarded an excessive risk to his health. *See Toguchi v. Chung*, 391 F.3d 1051, 1060 (9th Cir. 2004) (explaining that deliberate indifference is a high standard; medical malpractice or negligence does not amount to deliberate indifference); *see also Colwell v. Bannister*, 763 F.3d 1060, 1068 (9th Cir. 2014) (stating that a difference of opinion between a physician and a prisoner concerning appropriate medical care does not amount to deliberate indifference); *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011) (concluding that for a supervisor to be held liable under § 1983, the supervisor must have personal involvement in the constitutional deprivation or a sufficient causal connection must exist between the supervisor's wrongful conduct and the constitutional violation). To the extent that Irby alleged due process claims challenging the lack of adequate medical care, these claims are encompassed by his Eighth Amendment claims and were properly dismissed. *See Patel v. Penman*, 103 F.3d 868, 874 (9th Cir. 1996) (stating that generalized notion of substantive due process is unavailing where another amendment provides

explicit protection against a particular sort of government action), *overruled in part on other grounds as recognized by Nitco Holding Corp. v. Boujikian*, 491 F.3d 1086 (9th Cir. 2007).

The district court did not abuse its discretion by dismissing Irby's action without leave to amend because amendment would be futile. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard of review and explaining that dismissal without leave to amend is proper where amendment would be futile).

We do not consider matters raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.