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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JIMMIE A. SMITH,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>J. FITTER, M.D. and H. CASSIM, M.D.,</p> <p>Defendants - Appellees.</p>

No. 09-56548

D.C. No. 2:07-cv-05712-CJC-
AGR

MEMORANDUM*

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

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and THOMAS, Circuit Judges.

California state prisoner Jimmie A. Smith appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging deliberate indifference to his serious medical needs. We have jurisdiction under 28 U.S.C.

* 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).

§ 1291. We review de novo. *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004). We affirm.

The district court properly granted summary judgment because Smith did not raise a genuine issue of material fact as to whether the defendants knew of and disregarded any excessive risks to him. *See id.* at 1057–58 (a prison official acts with deliberate indifference only if he knows of and disregards an excessive risk to an inmate’s health and safety, and a difference of opinion about the best course of medical treatment does not amount to deliberate indifference); *Wood v. Housewright*, 900 F.2d 1332, 1334 (9th Cir. 1990) (“mere malpractice, or even gross negligence, does not suffice”).

AFFIRMED.