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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>PATRICK FUNDERBURK,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>DWIGHT NEVEN; et al.,</p> <p>Defendants - Appellees.</p>
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No. 10-16758

D.C. No. 2:08-cv-01858-JCM-GWF

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Submitted February 21, 2012**

Before: FERNANDEZ, McKEOWN, and BYBEE, Circuit Judges.

Patrick Funderburk, a former Nevada state prisoner, appeals pro se from the district court’s summary judgment in his 42 U.S.C. § 1983 action alleging that his First Amendment rights were violated when defendants failed to provide a sack

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

lunch as part of the prison's Ramadan meal schedule. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Shakur v. Schriro*, 514 F.3d 878, 883 (9th Cir. 2008), and we affirm.

The district court properly granted summary judgment because Funderburk failed to raise a genuine dispute of material fact as to whether defendants substantially burdened his ability to practice his religion. *See id.* at 884-85 (Free Exercise Clause is only implicated when a prison practice burdens an inmate's sincerely-held religious beliefs).

The district court did not abuse its discretion by denying Funderburk's untimely request for an extension of time to conduct discovery because Funderburk failed to show "good cause." *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1087-88 (9th Cir. 2002).

Funderburk correctly contends that he did not receive a summary judgment notice. *See Rand v. Rowland*, 154 F.3d 952, 956-57 (9th Cir. 1998) (en banc); *Klinge v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988). However, we take judicial notice of the adequate warning Funderburk received in prior litigation. *See Rand*, 154 F.3d at 961-62.

Funderburk's remaining contentions are unpersuasive.

AFFIRMED.