

DEC 10 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WALTER WILKERSON, III,

Plaintiff - Appellant,

v.

RANDY GROUNDS, Warden; et al.,

Defendants - Appellees.

No. 12-17599

D.C. No. 5:11-cv-01342-LHK

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Lucy H. Koh, District Judge, Presiding

Submitted November 19, 2013**

Before: CANBY, TROTT, and THOMAS, Circuit Judges.

California state prisoner Walter Wilkerson, III, appeals pro se from the district court’s summary judgment in his 42 U.S.C. § 1983 action alleging deliberate indifference to his safety. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004), and

* 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).

we affirm.

The district court properly granted summary judgment because, even assuming that the possible collapse of a prison bench was an objectively serious risk to inmate safety, Wilkerson failed to raise a genuine dispute of material fact as to whether defendants knew of and consciously disregarded such a risk. *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994) (claim of deliberate indifference requires showing that “the official [knew] of and disregard[ed] an excessive risk to inmate . . . safety”); *Toguchi*, 391 F.3d at 1057, 1060 (negligence is not sufficient to state a deliberate indifference claim).

We do not address Wilkerson’s contentions regarding the doctrine of qualified immunity, which the district court relied upon as an alternative basis to grant summary judgment.

AFFIRMED.