

APR 23 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>DAVID L ERICKSON,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p style="text-align: center;">v.</p> <p>SARGEANT LOPEZ,</p> <p style="text-align: center;">Defendant - Appellee.</p>
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No. 12-35506

D.C. No. 3:11-cv-05982-RJB

MEMORANDUM\*

Appeal from the United States District Court  
for the Western District of Washington  
Robert J. Bryan, District Judge, Presiding

Submitted April 16, 2013\*\*

Before: CANBY, IKUTA, and WATFORD, Circuit Judges.

Washington state prisoner David L. Erickson appeals pro se from the district court’s summary judgment in his 42 U.S.C. § 1983 action alleging First and Eighth Amendment violations. 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 we affirm.

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\* 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).

The district court properly granted summary judgment on Erickson's claim that defendant failed to protect him from inmate assault because Erickson failed to raise a genuine dispute of material fact as to whether defendant knew of and disregarded an excessive risk to Erickson's safety. *See id.* at 1056-57 (a prison official is deliberately indifferent only if he knows of and disregards an excessive risk to an inmate's safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference).

**AFFIRMED.**