

DEC 18 2014

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DARRELL GARRETT,

Plaintiff - Appellant,

v.

F. GONZALEZ, Warden; et al.,

Defendants - Appellees.

No. 14-15637

D.C. No. 1:11-cv-00686-SAB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Stanley Albert Boone, Magistrate Judge, Presiding**

Submitted December 9, 2014***

Before: WALLACE, LEAVY, and BYBEE, Circuit Judges.

Darrell Garrett, a California state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging that defendants

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

** Garrett consented to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c).

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

deprived him of food in violation of the Eighth Amendment. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under 28 U.S.C.

§§ 1915A and 1915(e)(2). *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (order). We affirm.

The district court properly dismissed Garrett’s action because Garrett failed to allege facts sufficient to show that the deprivation of food resulted in any pain or injury to his health. *See Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010) (although pro se pleadings are to be liberally construed, a plaintiff still must present factual allegations sufficient to state a plausible claim for relief); *Foster v. Runnels*, 554 F.3d 807, 814 (9th Cir. 2009) (“The sustained deprivation of food can be cruel and unusual punishment when it results in pain without any penological purpose.”); *LeMaire v. Maass*, 12 F.3d 1444, 1456 (9th Cir. 1993) (“The Eighth Amendment requires only that prisoners receive food that is adequate to maintain health . . .”).

We reject Garrett’s contention concerning the three-strike law, 28 U.S.C. § 1915(g).

AFFIRMED.