

SEP 03 2015

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U.S. COURT OF APPEALS

Corrected October 5, 2015+

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STEPHEN ANTHONY HENRY,

Plaintiff - Appellant,

v.

PRISON MEDICAL PROVIDERS OF
CALIFORNIA DEPARTMENT OF
CORRECTION AND
REHABILITATION; et al.,

Defendants - Appellees.

No. 14-16516

D.C. No. 3:13-cv-00201-CRB

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Charles R. Breyer, District Judge, Presiding

Submitted August 25, 2015**

Before: McKEOWN, CLIFTON, and HURWITZ, Circuit Judges.

Stephen Anthony Henry, a California state prisoner, appeals pro se from the

* 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).

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

The district court properly granted summary judgment because Henry failed to raise a genuine dispute of material fact as to whether defendants were deliberately indifferent by delaying his referral to an ear, nose and throat specialist. *See id.* at 1057-60 (a prison official acts with deliberate indifference only if he or she knows of and disregards an excessive risk to the prisoner's health; negligence and a mere difference in medical opinion are insufficient); *Hallett v. Morgan*, 296 F.3d 732, 746 (9th Cir. 2002) (where the prisoner is alleging that delay of medical treatment evinces deliberate indifference, the prisoner must show that the delay led to further injury).

AFFIRMED.