

AUG 25 2016

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GUSTAVO McKENZIE,

Plaintiff-Appellant,

v.

PAUL JORIZZO; MEDICAL EYE
CENTER - MEDFORD,

Defendants-Appellees.

No. 15-35083

D.C. No. 1:13-cv-01302-AA

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Ann L. Aiken, District Judge, Presiding

Submitted August 16, 2016**

Before: O'SCANNLAIN, LEAVY, and CLIFTON, Circuit Judges.

Gustavo McKenzie, a California state prisoner, appeals pro se from the 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

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

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 McKenzie failed to raise a genuine dispute of material fact as to whether defendants were deliberately indifferent to his primary open-angle glaucoma. *See id.* at 1058-60 (deliberate indifference is a high legal standard; medical malpractice, negligence, or a difference of opinion concerning the course of treatment does not amount to deliberate indifference).

We reject as without merit McKenzie's contentions that venue was improper and that the district court judge was biased.

We do not consider documents or facts that were not presented to the district court. *See United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990) ("Documents or facts not presented to the district court are not part of the record on appeal.").

Defendants' requests to strike McKenzie's opening brief and to dismiss the appeal, set forth in the answering brief, are denied.

McKenzie's request for judicial notice, filed on July 2, 2015, is denied.

AFFIRMED.