

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 23 2018

FOR THE NINTH CIRCUIT

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

REGINALD CLARENCE HOWARD,

No. 16-15679

Plaintiff-Appellant,

D.C. No. 2:08-cv-00728-GMN-
GWF

v.

HOWARD SKOLNIK, Director (NDOC);
DWIGHT NEVEN, Warden; ISIDRO
BACA, Warden; JULIO CALDERIN,
Chaplain; DWAYNE DEAL, Caseworker;
AWP J. HENSON,

MEMORANDUM*

Defendants-Appellees.

Appeal from the United States District Court
for the District of Nevada
Gloria M. Navarro, Chief Judge, Presiding

April 19, 2018**

Before: TROTT, SILVERMAN and TALLMAN, Circuit Judges.

Reginald Clarence Howard, a Nevada state prisoner, appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging that defendants violated his right to the free exercise of religion. We have jurisdiction

* 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).

under 28 U.S.C. § 1291. We review de novo both summary judgment and an officer's entitlement to qualified immunity. *Hughes v. Kisela*, 841 F.3d 1081, 1084 (9th Cir. 2016). We may affirm on any basis supported by the record. *Hartmann v. California Dept. of Corr. & Rehab.*, 707 F.3d 1114, 1121 (9th Cir. 2013). We affirm.

An inmate's First Amendment right of the free exercise of religion is subject to certain limitations. As the Supreme Court said in *O'Lone v. Estate of Shabazz*, 482 U.S. 342 (1987),

[I]ncarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system. The limitations on the exercise of constitutional rights arise both from the fact of incarceration and from valid penological objectives including -- deterrence of crime, rehabilitation of prisoners, and institutional security.

Id. at 348 (citations and quotations omitted).

The unchallenged factual reason for the Nevada Department of Correction's cancellation of Nation of Islam services at High Desert State Prison was institutional security. There was no dispute about the legitimacy of this reason sufficient to generate a genuine controversy requiring resolution by a trial.

AFFIRMED.