

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 5 2018

FOR THE NINTH CIRCUIT

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

JOHN R. POKRAS,

Plaintiff-Appellant,

v.

J. LEWIS; S. MORRIS,

Defendants-Appellees.

No. 18-55695

D.C. No. 2:17-cv-06603-JVS-GJS

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
James V. Selna, District Judge, Presiding

Submitted November 27, 2018**

Before: CANBY, TASHIMA, and FRIEDLAND, Circuit Judges.

John R. Pokras, a California state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging deliberate indifference to a serious medical need. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Hebbe v. Pliler*, 627 F.3d 338, 341 (9th Cir. 2010).

* 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).

We affirm.

The district court properly dismissed Pokras's action because Pokras failed to allege facts sufficient to show that defendants disregarded an excessive risk to his serious medical need. *See Toguchi v. Chung*, 391 F.3d 1051, 1057-58 (9th Cir. 2004) (a prison official is deliberately indifferent only if he or she knows of and disregards an excessive risk to inmate health; a mere difference of opinion in treating a medical condition does not amount to deliberate indifference).

The district court did not abuse its discretion by denying Pokras leave to file an amended complaint because amendment would have been futile. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard of review and explaining that dismissal without leave to amend is proper when amendment would be futile).

Pokras's appeal of the denial of his motion for preliminary injunctive relief is moot. *See Mt. Graham Red Squirrel v. Madigan*, 954 F.2d 1441, 1449-50 (9th Cir. 1992) (when underlying claims have been decided, reversal of denial of preliminary injunctive relief would have no practical consequences, and the issue is therefore moot).

Pokras's opposed motion for leave to file an appendix (Docket Entry No. 11)

is denied. *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.”).

AFFIRMED.