

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 13 2020

FOR THE NINTH CIRCUIT

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

CHET DUDA,

Plaintiff-Appellant,

v.

KENNETH CHOYCE; et al.,

Defendants-Appellees,

and

BRIAN E. WILLIAMS; BRETTENBACH,

Defendants.

No. 19-15450

D.C. No. 2:16-cv-03044-KJD-
CWH

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Kent J. Dawson, District Judge, Presiding

Submitted May 6, 2020**

Before: BERZON, N.R. SMITH, and MILLER, Circuit Judges.

Nevada state prisoner Chet Duda appeals pro se from the district court's

* 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).

summary judgment in his 42 U.S.C. § 1983 action alleging deliberate indifference to his health and safety. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Keenan v. Hall*, 83 F.3d 1083, 1088 (9th Cir. 1996). We affirm.

The district court properly granted summary judgment because Duda failed to raise a genuine dispute of material fact as to whether defendants were deliberately indifferent to a serious risk to Duda's health or safety in connection with excessive heat in his cell. *See Farmer v. Brennan*, 511 U.S. 825, 845, 847 (1994) (explaining that a prison official acts with deliberate indifference if the prison official "knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it").

We reject as meritless Duda's contention that he was entitled to a jury trial.

We do not consider arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n. 2 (9th Cir. 2009).

We do not consider the excerpts from the Merck Manual because these documents were not filed with the district court. *See United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990).

Duda's request for a six-month extension of time to file a supplemental reply brief, set forth in the reply brief, is denied.

AFFIRMED.