NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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

ALBERT LEVELL RILEY, Plaintiff-Appellant, v. T. FRIEDERICHS, Prison Doctor Employed with the California Department of Corrections and Rehabilitation, in his Individual and Official Capacities; et al., Defendants-Appellees.	No. 19-16289 D.C. No. 18-cv-02283-EJD MEMORANDUM[*]

Appeal from the United States District Court
for the Northern District of Washington
Edward Davila, District Judge, Presiding

Submitted February 4, 2020[**]

Before: FERNANDEZ, SILVERMAN, and TALLMAN, Circuit Judges.

California state prisoner Albert Levell Riley 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 U.S.C. §

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[*] 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).

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 Riley failed to raise a genuine dispute of material fact as to whether defendants were deliberately indifferent to Riley's chronic back pain. *See id.* at 1057 ("A prison official acts with deliberate indifference . . . only if the [prison official] knows of and disregards an excessive risk to inmate health and safety." (citation and internal quotation marks omitted)); *id.* at 1058 (recognizing that a difference of opinion concerning the appropriate course of treatment does not amount to deliberate indifference).

The district court did not abuse its discretion in declining to consider Riley's sur-reply because Riley filed it without leave of court as required under N.D. Cal. Civil Local Rule 7-3(d). *See Bias v. Moynihan*, 508 F.3d 1212, 1223 (9th Cir. 2007) (setting forth standard of review); *see also* N.D. Cal. Civ. R. 7-3(d) (providing that "[o]nce a reply is filed, no additional memoranda, papers or letters may be filed without prior Court approval").

We do not consider facts 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.").

Riley's request for judicial notice of medical records that post-date the filing

of his complaint, set forth in the opening brief, is denied. *See* Fed. R. Evid. 201(b).

AFFIRMED.