

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 24 2022

FOR THE NINTH CIRCUIT

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

STEPHEN FRANK KARBAN,

No. 21-15548

Plaintiff-Appellant,

D.C. No. 2:19-cv-04377-DWL

v.

MEMORANDUM*

VIVIAN BALTIERRA, Deputy Warden at
Eyman Complex, Cook Unit Prison;
STEVEN BRENNAN, Corrections Office
(Captain) #2304 at Eyman Complex;
CHARLES L. RYAN, Director, Arizona
Department of Corrections; RON LEE,
Security Operations Manager at Arizona
Department of Corrections,

Defendants-Appellees.

Appeal from the United States District Court
for the District of Arizona
Dominic Lanza, District Judge, Presiding

Submitted May 17, 2022**

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

Arizona state prisoner Stephen Frank Karban appeals pro se from the district

* 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).

court's judgment in his 42 U.S.C. § 1983 action alleging constitutional claims. We review de novo. *Hamby v. Hammond*, 821 F.3d 1085, 1090 (9th Cir. 2016) (summary judgment); *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000) (dismissal under 28 U.S.C. § 1915A). We affirm in part, reverse in part, and remand.

The district court properly granted summary judgment on Karban's due process claim against defendant Brennan because Karban failed to raise a genuine dispute of material fact as to whether the temporary loss of privileges resulting from a disciplinary violation that was dismissed through the prison's administrative appeal process imposed an atypical and significant hardship. *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003) (under the Due Process Clause, a prisoner may challenge a state disciplinary action only if it "deprives or restrains a state-created liberty interest in some 'unexpected manner'" or "imposes some 'atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life'" (quoting *Sandin v. Conner*, 515 U.S. 472, 484 (1995))).

However, summary judgment was improper on Karban's retaliation claim against defendant Baltierra. The record reflects that, approximately two weeks after Karban filed a grievance, Baltierra requested Karban be transferred. In the transfer request, Baltierra stated Karban was "not a yard problem, [and] likes paperwork." Additionally, Karban submitted a declaration stating that he had not

had issues with other inmates or staff prior to his transfer. Taking this evidence in the light most favorable to Karban, a genuine dispute of material fact exists as to whether Baltierra retaliated against Karban. *See Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir. 2009) (setting forth elements of a retaliation claim in the prison context); *Bruce v. Ylst*, 351 F.3d 1283, 1289 (9th Cir. 2003) (explaining that prison officials may not rely on an otherwise legitimate penological interest “as a cover or ruse to silence and punish [an inmate] because he filed grievances”). We reverse and remand for further proceedings on this claim.

The district court properly dismissed Karban’s access-to-courts claim against defendants Ryan and Lee because Karban failed to allege facts sufficient to establish these defendants caused an actual injury to a nonfrivolous claim. *See Lewis v. Casey*, 518 U.S. 343, 349-54 (1996) (setting forth elements of an access-to-courts claim and explaining that that right of access to the courts is the “right to bring to court a grievance that the inmate wishe[s] to present,” not a right “to litigate effectively once in court” (emphasis omitted)).

Karban’s motion for appointment of counsel (Docket Entry No. 20) is denied.

The parties will bear their own costs on appeal.

AFFIRMED in part, REVERSED in part, and REMANDED.