

FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JAN 29 2018

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

KEITH L. NASH,

Plaintiff-Appellant,

v.

GARRY E. LUCAS,

Defendant,

and

RICHARD J. BISHOP, sued in his
individual and official capacity; et al.,

Defendants-Appellees.

No. 17-35537

D.C. No. 3:14-cv-05851-RBL

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Ronald B. Leighton, District Judge, Presiding

Submitted January 16, 2018**

Before: REINHARDT, Trott, and HURWITZ, Circuit Judges.

Keith L. Nash appeals pro se from the district court's summary judgment in

* 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).*

his 42 U.S.C. § 1983 action alleging denial of access to the courts while he was a pretrial detainee. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Szajer v. City of Los Angeles*, 632 F.3d 607, 610 (9th Cir. 2011). We may affirm on any basis supported by the record, *Thompson v. Paul*, 547 F.3d 1055, 1058-59 (9th Cir. 2008), and we affirm.

The district court properly granted summary judgment on Nash's claim regarding the denial of a public notary because Nash failed to raise a genuine dispute of material fact as to whether defendants deprived him of an opportunity to challenge his sentence or conditions of confinement. *See Lewis v. Casey*, 518 U.S. 343, 355 (1996) (prison officials must provide an inmate the tools to challenge his sentence or conditions of confinement, but the loss of any other litigating capacity is constitutional).

Summary judgment on Nash's claim regarding the denial of access to the law library and legal supplies was proper because Nash was represented by court-appointed counsel in his state court proceeding at the time of the alleged deprivations. *See Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981) (availability of court-appointed counsel satisfies the constitutional obligation to provide meaningful access to the courts).

The district court did not abuse its discretion by denying Nash's motion for reconsideration because Nash failed to establish any basis for relief. *See Sch. Dist. No. 1J Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (setting forth standard of review and grounds for reconsideration under Federal Rule of Civil Procedure 59(e) and 60(b)).

We reject as meritless Nash's contentions regarding the district court's treatment of his complaint and denial of his motions to file a surreply, for an extension of time, to compel, and to amend his complaint.

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).

AFFIRMED.

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No. 17-35537

D.C. No. 3:14-cv-05851-RBL
Western District of Washington,
Tacoma

ORDER

Before: Trott and Hurwitz, Circuit Judges.

Nash's petition for panel rehearing (Docket Entry No. 19) is denied.

No further filings will be entertained in this closed case.

1 HONORABLE RONALD B. LEIGHTON
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

8 KEITH L NASH,
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10 Plaintiff,
11 v.
12 GARY E LUCAS, et al.
13 Defendants.

CASE NO. C14-5851-RBL

ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

DKT. #99

14 THIS MATTER is before the Court on Defendants' Motion for Summary Judgment [Dkt.
15 #99]. Plaintiff Keith Nash claims the Defendants, employees of Clark County Jail, violated his
16 civil rights under 42 U.S.C. § 1983 by delaying his access to a notary and to the law library.
17 Defendants ask the Court to dismiss his claims, arguing (1) Nash was provided a notary to
18 execute a power of attorney, (2) notary service unrelated to litigation is not a civil right, and (3)
19 he never filed a grievance about a lack of legal supplies, so failed to exhaust the administrative
20 remedies available to him. Nash asserts, in a conclusory fashion, that the Defendants ignored his
21 requests for access to the law library and to a notary, which forced him to submit unauthenticated
22 pleadings and led to the loss of his car. He similarly asserts he exhausted his administrative
23 options by filing a grievance about his need for a notary.

DISCUSSION

A. Standard of Review.

Summary judgment is appropriate when, viewing the facts in the light most favorable to the nonmoving party, there is no genuine issue of material fact which would preclude summary judgment as a matter of law. Once the moving party has satisfied its burden, it is entitled to summary judgment if the non-moving party fails to present, by affidavits, depositions, answers to interrogatories, or admissions on file, "specific facts showing that there is a genuine issue for trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). "The mere existence of a scintilla of evidence in support of the non-moving party's position is not sufficient." *Triton Energy Corp. v. Square D Co.*, 68 F.3d 1216, 1221 (9th Cir. 1995). Factual disputes whose resolution would not affect the outcome are irrelevant to the consideration of a motion for summary judgment. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In other words, "summary judgment should be granted where the nonmoving party fails to offer evidence from which a reasonable [fact finder] could return a [decision] in its favor." *Triton Energy*, 68 F.3d at 1220.

B. Right to a Notary is Limited.

According to Nash, he requested a notary to execute a power of attorney, and was provided one within one month. He argues this delay violated his right to access the courts. Defendants argue Nash cannot show he was denied access to a notary for a non-personal matter, and the Court agrees.

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege (1) a violation of his rights secured by the Constitution and laws of the United States, and (2) that the deprivation was committed by a person acting under the color of state law. *Parratt v. Taylor*, 452 U.S. 527, 535,

1 101 S. Ct. 108 (1981). To be liable, the wrongdoer must personally cause the violation. *Leer v.*
2 *Murphy*, 844. F.2d 628, 633 (9th Cir. 1988).

3 Notary services are a secured civil right only under limited circumstances. State prison
4 authorities must provide indigent inmates “with paper and pen to draft legal documents with
5 notarial services to authenticate them, and with stamps to mail them.” *Bounds v. Smith*, 430 U.S.
6 817, 825, 97 S.Ct. 1491 (1977). This access to the courts does not extend indefinitely, however.
7 The tools prison authorities must provide “are those that the inmates need in order to attack their
8 sentences, directly or collaterally, and in order to challenge the conditions of their confinement.
9 Impairment of any *other* litigating capacity is simply one of the incidental (and perfectly
10 constitutional) consequences of conviction and incarceration.” *Lewis v. Casey*, 518 U.S. 343,
11 355, 116 S.Ct. 2174 (1996) (emphasis in original).

12 Nash has not shown he requested a notary to challenge his sentence or confinement, and
13 that the Defendants denied him such access. Therefore, under *Triton Energy Corp.*, he cannot
14 sustain his § 1983 claim against them. *See* 68 F.3d at 1221.

15 **C. Exhaustion Requirement.**

16 Nash also argues the Defendants delayed his access to the prison’s law library and legal
17 supplies. Defendants argue Nash never submitted a grievance regarding access to the law library
18 related to challenging his sentence or confinement, and so failed to exhaust his administrative
19 remedies.

20 The Prison Litigation Reform Act requires inmates in correctional facilities to exhaust
21 their administrative remedies through the correctional facility’s grievance process before filing a
22 lawsuit related to the conditions of their confinement. *See* 42 U.S.C. § 1997e(a).

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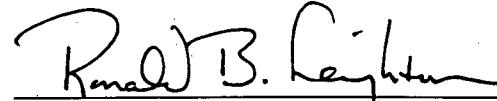
1 Nash has failed to show he filed a grievance about an alleged denial of access to the law
2 library or to legal supplies. He therefore failed to exhaust the administrative remedies available
3 to him, and cannot now pursue such a claim.

4 **CONCLUSION**

5 Defendants' Motion for Summary Judgment [Dkt. #99] is GRANTED. Nash's pending
6 motion [Dkt. #134] is DENIED as moot. The case is closed.

7 IT IS SO ORDERED.

8 Dated this 30th day of May, 2017.

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10 Ronald B. Leighton

11 United States District Judge

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