

Ex E3

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

JAN 10 2019

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

ALBERT J. HAMILTON,

No. 17-16770

Plaintiff-Appellant,

D.C. No. 1:15-cv-00661-AWI-SAB
Eastern District of California,
Fresno

v.

WASCO STATE PRISON; et al.,

ORDER

Defendants-Appellees.

Before: FARRIS, BYBEE, and N.R. SMITH, Circuit Judges.

We treat appellant's "objection to judge memorandum" (Docket Entry Nos. 40 & 46) as a petition for panel rehearing and deny the petition.

Appellee's opposed bill of costs (Docket Entry No. 38) is granted. The determination of allowed costs is referred to the Clerk's Office. *See* 28 U.S.C. § 1920; Fed. R. App. P. 39; 9th Cir. R. 39-1.

All other pending requests are denied.

No further filings will be entertained in this closed case.

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v.

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MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Anthony W. Ishii, District Judge, Presiding

Submitted August 15, 2018**

Before: FARRIS, BYBEE, and N.R. SMITH, Circuit Judges.

Albert J. Hamilton, a California state prisoner, appeals pro se from the district court's summary judgment for failure to exhaust administrative remedies in his 42 U.S.C. § 1983 action alleging constitutional violations. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Williams v. Paramo*,

* 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).

775 F.3d 1182, 1191 (9th Cir. 2015). We affirm.

The district court properly granted summary judgment because Hamilton did not properly exhaust his administrative remedies or raise a genuine dispute of material fact as to whether administrative remedies were effectively unavailable to him. *See Ross v. Blake*, 136 S. Ct. 1850, 1858-60 (2016) (describing the limited circumstances under which administrative remedies are deemed unavailable); *Woodford v. Ngo*, 548 U.S. 81, 90 (2006) (“[P]roper exhaustion of administrative remedies . . . means using all steps that the agency holds out, and doing so properly (so that the agency addresses the issues on the merits).” (citation, internal quotation marks, and emphasis omitted)).

All pending requests are denied.

AFFIRMED.