

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 7 2020

FOR THE NINTH CIRCUIT

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

THEODORE C. SHOVE,

Plaintiff-Appellant,

v.

McDONALD, Warden, Captain; et al.,

Defendants-Appellees,

and

CHAPPELL, Warden,

Defendant.

No. 18-17326

D.C. No. 3:14-cv-02903-JD

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
James Donato, District Judge, Presiding

Submitted February 4, 2020**

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

California state prisoner Theodore C. Shove 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 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. § 1291. We review de novo a district court's summary judgment for failure to exhaust administrative remedies. *Williams v. Paramo*, 775 F.3d 1182, 1191 (9th Cir. 2015). We affirm.

The district court properly granted summary judgment because Shove failed to exhaust his available administrative remedies as required by the Prison Litigation Reform Act ("PLRA"), and failed to 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, 1856, 1858-60 (2016) (explaining that an inmate must exhaust "such administrative remedies as are available" before bringing suit, and describing limited circumstances in which administrative remedies are unavailable, including when "prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation"); *Williams*, 775 F.3d at 1191 (a prisoner who does not exhaust administrative remedies must show that "there is something particular in his case that made the existing and generally available administrative remedies effectively unavailable to him"); *see also Rodriguez v. County of Los Angeles*, 891 F.3d 776, 792 (9th Cir. 2018) (setting forth required showing for a fear of retaliation to excuse the PLRA's exhaustion requirement).

We reject as unsupported by the record Shove's contentions regarding judicial bias.

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or 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 documents and facts not presented to the district court. *See United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990).

Appellees' motion for summary affirmance (Docket Entry No. 17) is denied as moot. All other pending motions and requests are denied.

AFFIRMED.

Case 3:14-cv-02903-JD Document 163 Filed 11/14/18 Page 2 of 2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIATHEODORE SHOVE,
Plaintiff,

v.

MCDONALD, et al.,
Defendants.Case No. 14-cv-02903-JD**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk of the United States District Court, Northern District of California.

That on November 14, 2018, I SERVED a true and correct copy(ies) of the attached documents by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter named, and by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office receptacle located in the Clerk's office.

Theodore Shove ID: G11092
San Quentin State Prison
San Quentin, CA 94974

Dated: November 14, 2018

Susan Y. Soong
Clerk, United States District Court

By: 
LISA R. CLARK, Deputy Clerk to the
Honorable JAMES DONATO

United States District Court
Northern District of California

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

MAY 11 2020

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

THEODORE C. SHOVE,

Plaintiff-Appellant,

v.

McDONALD, Warden, Captain; et al.,

Defendants-Appellees,

and

CHAPPELL, Warden,

Defendant.

No. 18-17326

D.C. No. 3:14-cv-02903-JD
Northern District of California,
San Francisco

ORDER

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

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Shove's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 32) are denied.

All pending motions and requests are denied.

No further filings will be entertained in this closed case.

General Docket

United States Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 18-17326

Docketed:

12/05/2018

Nature of Suit: 3555 Prison Condition

Termed:

02/07/2020

Theodore Shove v. McDonald, et al

Appeal From: U.S. District Court for Northern California, San Francisco

Fee Status: Partially Paid

Case Type Information:

- 1) prisoner
- 2) state
- 3) civil rights

Originating Court Information:

District: 0971-3 : 3:14-cv-02903-JD

Trial Judge: James Donato, District Judge

Date Filed: 06/24/2014

Date	Date	Date NOA	Date Rec'd
Order/Judgment:	Order/Judgment EOD:	Filed:	COA:
11/14/2018	11/14/2018	12/03/2018	12/05/2018

Prior Cases:

96-80069 Date Filed: 02/14/1996 Date Disposed:
 03/29/1996 Disposition: Dismissed - Judge Order

Current Cases:

None

THEODORE C. SHOVE (State Prisoner: G-11092)	Theodore C. Shove [NTC Pro Se] CALIFORNIA STATE PRISON - SAN QUENTIN Inmate Mail San Quentin, CA 94974
Plaintiff - Appellant,	

General Docket
United States Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 18-17326 Nature of Suit: 3555 Prison Condition Theodore Shove v. McDonald, et al Appeal From: U.S. District Court for Northern California, San Francisco Fee Status: Partially Paid	Docketed: 12/05/2018 Termed: 02/07/2020												
Case Type Information: 1) prisoner 2) state 3) civil rights													
Originating Court Information: District: 0971-3 : <u>3:14-cv-02903-JD</u> Trial Judge: James Donato, District Judge Date Filed: 06/24/2014 <table style="width: 100%; border: none;"> <tr> <td style="text-align: center;">Date</td> <td style="text-align: center;">Date</td> <td style="text-align: center;">Date NOA</td> <td style="text-align: center;">Date Rec'd</td> </tr> <tr> <td style="text-align: center;">Order/Judgment:</td> <td style="text-align: center;">Order/Judgment EOD:</td> <td style="text-align: center;">Filed:</td> <td style="text-align: center;">COA:</td> </tr> <tr> <td style="text-align: center;">11/14/2018</td> <td style="text-align: center;">11/14/2018</td> <td style="text-align: center;">12/03/2018</td> <td style="text-align: center;">12/05/2018</td> </tr> </table>		Date	Date	Date NOA	Date Rec'd	Order/Judgment:	Order/Judgment EOD:	Filed:	COA:	11/14/2018	11/14/2018	12/03/2018	12/05/2018
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11/14/2018	11/14/2018	12/03/2018	12/05/2018										
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Current Cases: None													

THEODORE C. SHOVE (State Prisoner: G-11092) <div style="text-align: right;">Plaintiff - Appellant,</div>	Theodore C. Shove [NTC Pro Se] CALIFORNIA STATE PRISON - SAN QUENTIN Inmate Mail San Quentin, CA 94974
---	--

v.

MCDONALD, Warden, Captain
Defendant - Appellee,

Jeffrey Thomas Fisher
Direct: 415-510-3568
[COR LD NTC Dep State Atty Gen]
AGCA - Office of the California
Attorney General
Suite 11000
455 Golden Gate Avenue
San Francisco, CA 94102

ARNOLD, Lieutenant
Defendant - Appellee,

Jeffrey Thomas Fisher
Direct: 415-510-3568
[COR LD NTC Dep State Atty Gen]
(see above)

GRANT, Doctor
Defendant - Appellee,

Jeffrey Thomas Fisher
Direct: 415-510-3568
[COR NTC Dep State Atty Gen]
(see above)

CHAPPELL, Warden
Defendant,

THEODORE C. SHOVE,

Plaintiff - Appellant,

v.

MCDONALD, Warden, Captain; ARNOLD, Lieutenant; GRANT, Doctor,

Defendants - Appellees,

and

CHAPPELL, Warden,

Defendant.

- 12/05/2018 1 DOCKETED CAUSE AND ENTERED APPEARANCE OF COUNSEL AND PRO SE APPELLANT. This appeal is subject to a pre-filing review order in case number 96-80069. The appeal will be reviewed by the Court to determine whether it will be allowed to proceed. No briefing schedule will be set until/unless the Court determines that the appeal should be allowed to proceed. [11111237] (RT) [Entered: 12/05/2018 03:03 PM]
- 01/30/2019 2 Filed Appellant Theodore C. Shove motion for status and clarification. Deficiencies: None. Served on 01/28/2019. [11173506] (RR) [Entered: 01/30/2019 05:02 PM]
- 03/05/2019 3 Filed Appellant Theodore C. Shove motion for status and clarification . Deficiencies: None. Served on 03/04/2019. [11220452] (RR) [Entered: 03/07/2019 05:35 PM]
- 03/20/2019 4 Filed order (BARRY G. SILVERMAN, RICHARD C. TALLMAN and MARY H. MURGUIA) This court has reviewed the notice of appeal and accompanying documents filed December 3, 2018 in the above-referenced district court docket pursuant to the pre-filing review order entered in docket No. 96-80069. Appeal No. 18-17326 shall be permitted to proceed. A review of the district court docket reflects that appellant was permitted to proceed in forma pauperis in the district court, and that such permission has not been revoked to date. Consequently, appellant's forma pauperis status continues in this court. Fed. R. App. P. 24(a). Pursuant to 28 U.S.C. § 1915(b)(1) and (2), however, appellant must pay the full amount of the filing and docketing fees for this appeal when funds are available in appellant's account. Consequently, within 21 days after the filing date of this order, appellant shall complete and file with this court the enclosed authorization form, which directs the prison officials at appellant's institution to assess, collect, and forward to the court the \$505.00 filing and docketing fees for this appeal on a monthly basis whenever funds exist in appellant's trust fund account. These fees will continue to be collected regardless of the date or manner of disposition of this appeal. See 28 U.S.C. § 1915(b)(2) and (e) (2). Appellant is not responsible for payment when the funds in appellant's prison trust account total less than \$10.00, but payments must resume when additional deposits are made or funds are otherwise available. If appellant fails to comply with this order, the appeal may be dismissed by the Clerk. See 9th Cir. R. 42-1. The opening brief is due May 20, 2019. The answering brief is due June 19, 2019. The optional reply brief is due within 21

days after service of the opening brief. Because appellant is proceeding without counsel, the excerpts of record requirement is waived. See 9th Cir. R. 30-1.2. Appellees' supplemental excerpts of record are limited to the district court docket sheet, the notice of appeal, the judgment or order appealed from, and any specific portions of the record cited in appellees' brief. See 9th Cir. R. 30-1.7. The Clerk shall serve a pro se case opening packet and a prisoner authorization form on appellant. [11235802] (CKP) [Entered: 03/20/2019 01:24 PM]

- 03/27/2019 6 Filed Appellant Theodore C. Shove motion to file prisoner authorization form and for USDC sheet requested in NOA. Deficiencies: None. Served on 3/24/19 [11245320] (RR) [Entered: 03/28/2019 12:34 PM]
- 03/28/2019 5 Received PLRA authorization response from appellant. Dated 03/24/2019. [11245315] (RR) [Entered: 03/28/2019 12:30 PM]
- 03/29/2019 7 CLERK ORDER FILED (Deputy Clerk CKP) Prisoner completed authorization fee order. [11246440] (CKP) [Entered: 03/29/2019 11:01 AM]
- 04/02/2019 8 Filed Appellant Theodore C. Shove letter dated 03/25/2019 requesting informal brief. Paper filing deficiency: None. [11249939] (RR) [Entered: 04/02/2019 11:22 AM]
- 04/02/2019 9 Filed clerk order (Deputy Clerk: DA): The court has received and filed appellant's completed prisoner authorization form. The motion for a copy of the district court's docket [6] is granted. The Clerk shall send appellant a copy of the public dockets for district court action No. 3:14-cv-02903-JD and this appeal. The previously established briefing schedule remains in effect. [11249950] (CKP) [Entered: 04/02/2019 11:24 AM]
- 04/03/2019 10 Sent Appellant a copy of the Informal Opening Brief form in response to his letter of request filed on 04/02/2019. [11251161] (JR) [Entered: 04/03/2019 09:12 AM]
- 05/20/2019 11 Filed original and 0 copies of Appellant Theodore C. Shove (Informal: Yes) opening brief of 16 pages. Served on 05/16/2019. [11304458] (KT) [Entered: 05/21/2019 01:04 PM]
- 05/20/2019 12 Filed Appellant Theodore C. Shove Motion to Present Attached Exhibits to Support Informal Brief. Deficiencies: None. Served on 05/16/2019. [11304468] (KT) [Entered: 05/21/2019 01:07 PM]
- 05/20/2019 13

Received Appellant Theodore C. Shove Exhibit H (Hand Brace).
Deficiencies: Motion to transmit physical exhibits pending.
[11304475] (KT) [Entered: 05/21/2019 01:09 PM]

05/28/2019 14 Filed Appellant Theodore C. Shove motion to present attachments that were not filed with appeal. Deficiencies: None. Served on 05/23/2019. [11314298] (RR) [Entered: 05/30/2019 04:06 PM]

05/29/2019 15 Filed Appellant Theodore C. Shove motion to present attached exhibits to support informal brief. Deficiencies: None. Served on 5/28/19. [11316218] (RR) [Entered: 05/31/2019 04:39 PM]

06/06/2019 16 Filed Appellant Theodore C. Shove motion for expedited hearing and review. Deficiencies: None. Served on 06/02/2019. [11322506] (RR) [Entered: 06/06/2019 03:03 PM]

06/10/2019 17 Filed (ECF) Appellees Arnold, Grant and McDonald Motion for summary affirmance. Date of service: 06/10/2019. [11324579] [18-17326] (Fisher, Jeffrey) [Entered: 06/10/2019 10:09 AM]

06/24/2019 18 Filed Appellant Theodore C. Shove response opposing motion for summary affirmance. Served on 06/20/2019. [11344252] (RR) [Entered: 06/25/2019 03:23 PM]

07/03/2019 19 Filed (ECF) Appellees Grant, Arnold and McDonald reply to response (). Date of service: 07/03/2019. [11353978] [18-17326] (Fisher, Jeffrey) [Entered: 07/03/2019 02:26 PM]

07/05/2019 20 Filed Appellant Theodore C. Shove motion to correct error in letter of attachment, by California Public Defenders. Deficiencies: None. Served on 07/02/2019. [11355497] (RR) [Entered: 07/05/2019 04:03 PM]

07/10/2019 21 Filed Appellant Theodore C. Shove motion to strike portion of appellee's reply to affirmance of summary judgement. Deficiencies: None. Served on 07/08/2019. [11359375] (RR) [Entered: 07/10/2019 12:58 PM]

08/01/2019 22 Filed Appellant Theodore C. Shove motion for injunction relief. Deficiencies: None. [11387497] (RR) [Entered: 08/05/2019 03:05 PM]

09/24/2019 23 Filed Appellant Theodore C. Shove motion for status hearing and permission to file for order of protection. Deficiencies: No certificate of service. [11443865] (RR) [Entered: 09/25/2019 03:37 PM]

10/17/2019 24

- Filed Appellant Theodore C. Shove motion for court ordered protections on imminent threats to serious physical injuries, at very least formal admonishment. Deficiencies: None. Served on 10/13/2019. [11468569] (QDL) [Entered: 10/17/2019 03:09 PM]
- 10/29/2019 25 Filed Appellant Theodore C. Shove letter dated 10/24/2019 re: request for docket sheet and motions. Paper filing deficiency: None. [11483969] (RR) [Entered: 10/30/2019 04:17 PM]
- 10/30/2019 26 Sent Appellant a copy of the docket sheet and docket entry numbers 14-24 in response to his letter of request filed on 10/30/2019. [11484061] (JR) [Entered: 10/30/2019 04:42 PM]
- 11/07/2019 27 Filed Appellant Theodore C. Shove motion for court ordered protections on imminent threats to serious physical injuries, at very least formal admonishment.. Deficiencies: None. [11494850] (RR) [Entered: 11/08/2019 04:55 PM]
- 11/07/2019 28 Filed Appellant Theodore C. Shove letter dated 11/04/2019 re: additional court order for protection. Paper filing deficiency: None. [11494859] (RR) [Entered: 11/08/2019 04:58 PM]
- 11/15/2019 29 Filed Appellant Theodore C. Shove letter dated 11/08/2019 re: review case no. 18-17326.. Paper filing deficiency: None. [11500590] (RR) [Entered: 11/15/2019 12:59 PM]
- 12/16/2019 30 Filed Appellant Theodore C. Shove letter dated 12/11/2019 re: exhibits. Paper filing deficiency: None. [11538875] (RR) [Entered: 12/19/2019 03:00 PM]
- 02/07/2020 31 FILED MEMORANDUM (FERDINAND F. FERNANDEZ, BARRY G. SILVERMAN and RICHARD C. TALLMAN) Appellees' motion for summary affirmance (Docket Entry No. [17]) is denied as moot. All other pending motions and requests are denied. AFFIRMED. FILED AND ENTERED JUDGMENT. [11589324] (JN) [Entered: 02/07/2020 10:19 AM]
- 02/24/2020 32 Filed Appellant Theodore C. Shove petition for panel rehearing and petition for rehearing en banc. Number of Pages 14. Served on 02/16/2020. Deficiency: None. (RESEARCH) [11607015] (QDL) [Entered: 02/24/2020 03:05 PM]
- 03/30/2020 33 Filed Appellant Theodore C. Shove motion for hearing on orders of protections. Deficiencies: None [11645615] (NAC) [Entered: 03/30/2020 01:11 PM]
- 04/09/2020 34

Filed Appellant Theodore C. Shove motion for sanctions.
Deficiencies: None. Served on. [11656342] (NAC) [Entered:
04/09/2020 11:54 AM]

04/27/2020 35 Filed Appellant Theodore C. Shove motion for expedited ruling.
Deficiencies: None. [11674489] (RR) [Entered: 04/28/2020 01:29
PM]

05/04/2020 36 Filed Appellant Theodore C. Shove motion to incorporate
additional evidence. Deficiencies: None. [11681731] (RR)
[Entered: 05/05/2020 09:10 PM]

05/08/2020 37 Filed Appellant Theodore C. Shove letter dated 05/06/2020 re:
missing pleadings. Paper filing deficiency: None. [11685558]
(RR) [Entered: 05/08/2020 04:23 PM]

05/11/2020 38 Filed order (FERDINAND F. FERNANDEZ, BARRY G.
SILVERMAN and RICHARD C. TALLMAN) The panel has
voted to deny the petition for panel rehearing. The full court has
been advised of the petition for rehearing en banc and no judge
has requested a vote on whether to rehear the matter en banc. See
Fed. R. App. P. 35. Shove's petition for panel rehearing and
petition for rehearing en banc (Docket Entry No. 32) are denied.
All pending motions and requests are denied. No further filings
will be entertained in this closed case. [11687053] (WL) [Entered:
05/11/2020 03:55 PM]