

Rec'd
12-20-21

FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

DEC 15 2022

FOR THE NINTH CIRCUIT

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

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| <p>ANDREW J.J. WOLF,</p> <p>Plaintiff-Appellant,</p> <p>v.</p> <p>JOSH TEWALT, Director IDOC; BREE DERRICK; CHAD PAGE; RANDY VALLEY; AMANDA GENTRY; ROSS CASTLETON; WALTER CAMPBELL, "Wally"; KEITH YORDY, Warden; TIMOTHY RICHARDSON; CHESTER MARTIN; LUKE KORMYLO; MICHAEL RICE; AMADA DIETZ; TYRELL DAVIS; SUSAN WESSELS; AMANDA HOTTINGER; NICK BAIRD,</p> <p>Defendants-Appellees.</p> |
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No. 21-35282

D.C. No. 1:20-cv-00259-BLW

MEMORANDUM*

2022 U.S. App. LEXIS 34621
2022 WL 17717399

Appeal from the United States District Court
for the District of Idaho
B. Lynn Winmill, District Judge, Presiding

Submitted December 8, 2022**

Before: WALLACE, TALLMAN, and BYBEE, Circuit Judges.

* 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).

Idaho state prisoner Andrew J.J. Wolf appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging constitutional claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Wilhelm v. Rotman*, 680 F.3d 1113, 1118 (9th Cir. 2012) (dismissal under 28 U.S.C. § 1915A); *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) (dismissal under 28 U.S.C. § 1915(e)(2)(B)(ii)). We affirm.

The district court properly dismissed Wolf's due process claim regarding his placement and continued confinement in administrative segregation because Wolf failed to allege facts sufficient to show that he was denied any procedural protections that were due. *See Toussaint v. McCarthy*, 801 F.2d 1080, 1100-01 (9th Cir. 1986), *abrogated in part on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995) (setting forth due process requirements for placement in administrative segregation and continued segregated confinement).

The district court properly dismissed Wolf's claim concerning the conditions of confinement in administrative segregation because Wolf failed to allege facts sufficient to show that the conditions "result[ed] in the denial of the minimal civilized measure of life's necessities" *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (citation and internal quotation marks omitted).

The district court did not abuse its discretion by denying Wolf's motion for reconsideration because Wolf failed to establish any basis for such relief. *See Sch.*

Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc., 5 F.3d 1255, 1262-63 (9th Cir. 1993) (setting forth standard of review and grounds for reconsideration).

The district court did not abuse its discretion by denying Wolf's request for appointment of counsel because Wolf failed to demonstrate exceptional circumstances. *See Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (setting forth standard of review and "exceptional circumstances" requirement for appointment of counsel).

We do not consider matters not specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.

UNITED STATES COURT OF APPEALS

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FOR THE NINTH CIRCUIT

MAY 18 2023

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

ANDREW J.J. WOLF,

Plaintiff-Appellant,

v.

JOSH TEWALT, Director IDOC; et al.,

Defendants-Appellees.

No. 21-35282

D.C. No. 1:20-cv-00259-BLW
District of Idaho,
Boise

ORDER

2023 U.S. App. LEXIS 12257

Before: WALLACE, TALLMAN, and BYBEE, 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.*

Wolf's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 38) are denied.

The mandate will reissue forthwith.

No further filings will be entertained in this closed case.