

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

DEC 8 2017

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

SHAKA, AKA Timothy L. Malumphy,

Plaintiff-Appellant,

v.

CHARLES L. RYAN, named as Chuck
Ryan, Director, AZ Department of
Corrections at Central Office, Phoenix, AZ;
DENNIS G. CHENAIL, named as Dennis
Chenail; Facility Health Adminstrator at
Yuma Complex, San Luis, AZ,

Defendants-Appellees.

No. 15-15486

D.C. No. 2:10-cv-02253-SMM
District of Arizona,
Phoenix

ORDER

Before: GOULD, CLIFTON, and HURWITZ, 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.

Shaka's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 28) are denied.

Shaka's motion to file supplemental exhibit (Docket Entry No. 30) is denied.

Appellees' opposed bill of costs (Docket Entry No. 27) 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.

No further filings will be entertained in this closed case.

NOT FOR PUBLICATION

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FOR THE NINTH CIRCUIT

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U.S. COURT OF APPEALS

SHAKA, AKA Timothy L. Malumphy,

No. 15-15486

Plaintiff-Appellant,

D.C. No. 2:10-cv-02253-SMM

v.

MEMORANDUM*

CHARLES L. RYAN, named as Chuck
Ryan, Director, AZ Department of
Corrections at Central Office, Phoenix, AZ;
DENNIS G. CHENAIL, named as Dennis
Chenail; Facility Health Administrator at
Yuma Complex, San Luis, AZ,

Defendants-Appellees.

Appeal from the United States District Court
for the District of Arizona
Stephen M. McNamee, District Judge, Presiding

Submitted April 11, 2017**

Before: GOULD, CLIFTON, and HURWITZ, Circuit Judges.

Arizona state prisoner Shaka, AKA Timothy L. Malumphy, appeals pro se
from the district court's summary judgment and dismissal order in his 42 U.S.C.

* 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).

§ 1983 action alleging various constitutional claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, and may affirm on any ground supported by the record. *Shanks v. Dressel*, 540 F.3d 1082, 1086 (9th Cir. 2008). We affirm.

Dismissal of Count I alleging ex post facto, due process and equal protection claims was proper because success on these claims would necessarily imply the invalidity of Shaka's sentence, and Shaka failed to allege that his sentence had been invalidated. *See Heck v. Humphrey*, 512 U.S. 477, 487 (1994) (if "a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence . . . the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated"); *see also El-Shaddai v. Zamora*, 833 F.3d 1036, 1046 (9th Cir. 2016) ("When a prisoner challenges the fact or duration of his confinement, the sole federal remedy is a writ of habeas corpus.").

The district court properly granted summary judgment on Shaka's medical deliberate indifference claim because Shaka failed to raise a genuine dispute of material fact as to whether defendant Chenail was deliberately indifferent in his response to Shaka's request for orthopedic care, and whether defendant Ryan knew of Shaka's medical needs and acted with conscious disregard. *See Farmer v.*

Brennan, 511 U.S. 825, 837 (1994) (a prison official cannot be liable under the Eighth Amendment “unless the official knows of and disregards an excessive risk to inmate health or safety”); *Peralta v. Dillard*, 744 F.3d 1076, 1084 (9th Cir. 2014) (en banc) (“A prison medical official who fails to provide needed treatment because he lacks the necessary resources can hardly be said to have intended to punish the inmate.”).

The district court properly granted summary judgment on Shaka’s Eighth Amendment failure-to-protect claim against defendants Benavidez and Felkins because Shaka failed to raise a genuine dispute of material fact as to whether these defendants acted with deliberate indifference to his safety. *See Farmer*, 511 U.S. at 837.

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.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Shaka,

Plaintiff,

v.

Charles L. Ryan, et al.,

Defendants.

No. CV 10-2253-PHX-SMM

ORDER

Plaintiff Shaka, who is currently confined in the Arizona State Prison Complex-Yuma ("ASPC-Yuma"), brought this civil rights case pursuant to 42 U.S.C. § 1983. On March 4, 2015, the Court granted Defendants' Motion for Summary Judgment, denied Plaintiff's Cross-Motion for Summary Judgment, and directed the Clerk of Court to enter Judgment. (Doc. 312.) The Clerk of Court entered Judgment that same day. (Doc. 313.) On March 13, 2015, Plaintiff filed a Notice of Appeal with the Ninth Circuit Court of Appeals. (Doc. 314.) On March 19, 2015, Plaintiff filed a "Request for Certificate of Appealability (C.O.A.)." (Doc. 316.)

Plaintiff's request will be denied. The requirements for a certificate of appealability apply to claims for habeas corpus relief, rather than claims brought pursuant to 42 U.S.C. § 1983. *See, e.g., Stein v. Quinn*, 2007 WL 1725553, at *1 (W.D. Wash. June 11, 2007); *Harnden v. Key*, 2009 WL 929070, at *1 (E.D. Cal. 2009).

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1 **IT IS THEREFORE ORDERED** that Plaintiff's "Request for Certificate of
2 Appealability (C.O.A.)" (Doc. 316) is **denied**.

3 DATED this 24th day of March, 2015.
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8 Honorable Stephen M. McNamee
9 Senior United States District Judge
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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Shaka,

10 Plaintiff,

11 v.

12 Charles L. Ryan, et al.,

13 Defendants.
14

NO. CV-10-02253-PHX-SMM (BSB)

JUDGMENT IN A CIVIL CASE

15 **Decision by Court.** This action came for consideration before the Court. The
16 issues have been considered and a decision has been rendered.

17 IT IS ORDERED AND ADJUDGED that pursuant to the Court's Order filed
18 March 4, 2015, judgment is entered in favor of defendants and against plaintiff. Plaintiff
19 to take nothing, and the complaint and action are dismissed with prejudice.

20 Brian D. Karth
21 District Court Executive/Clerk of Court

22 March 4, 2015

23 By s/ Linda Patton
24 Deputy Clerk
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**Additional material
from this filing is
available in the
Clerk's Office.**