

465 Fed.Appx. 718

This case was not selected for publication in the
Federal Reporter.

Not for Publication in West's Federal Reporter See
Fed. Rule of Appellate Procedure 32.1 generally
governing citation of judicial decisions issued on or
after Jan. 1, 2007. See also Ninth Circuit Rule 36-3.
(Find CTA9 Rule 36-3)

United States Court of Appeals,
Ninth Circuit.

Todd Lewis ASHKER; Danny Troxell,
Plaintiffs—Appellants,

v.

Arnold SCHWARZENEGGER; et al.,
Defendants—Appellees.

No. 10–15911.

|
Submitted Dec. 19, 2011.*

|
Filed Jan. 11, 2012.

Attorneys and Law Firms

Todd Lewis Ashker, Crescent City, CA, pro se.

Danny Troxell, Crescent City, CA, pro se.

John Randall Andrada, Esquire, Nicole Roman, Andrada
& Associates Professional Corporation, Oakland, CA, for
Defendants—Appellees.

Appeal from the United States District Court for the
Northern District of California, Claudia A. Wilken,
District Judge, Presiding. D.C. No. 4:05–cv–03286–CW.

Before: GOODWIN, WALLACE, and McKEOWN,
Circuit Judges.

MEMORANDUM*

****1** California state prisoners Todd Lewis Ashker and
Danny Troxell appeal pro se from the district court's
judgment in their 42 U.S.C. § 1983 action. We have
jurisdiction under 28 U.S.C. § 1291. We review de novo a
dismissal for failure to exhaust, *Wyatt v. Terhune*, 315
F.3d 1108, 1117 (9th Cir.2003), and the entry of summary
judgment, *Bruce v. Ylst*, 351 F.3d 1283, 1287 (9th
Cir.2003). We affirm.

***719** The district court properly dismissed portions of
plaintiffs' claims under the First, Fifth, Eighth, and
Fourteenth Amendments and the Ex Post Facto Clause for
failure to exhaust because certain of their grievances
failed to comply with the regulations or describe the facts
underlying these claims, while others were not exhausted
before they filed the action. See *Woodford v. Ngo*, 548
U.S. 81, 88, 93, 126 S.Ct. 2378, 165 L.Ed.2d 368 (2006)
(requiring proper exhaustion); *Griffin v. Arpaio*, 557 F.3d
1117, 1120–21 (9th Cir.2009) (grievances must give
notice of claim); *McKinney v. Carey*, 311 F.3d 1198,
1199 (9th Cir.2002) (per curiam) (standard for timely
exhaustion).

The district court properly granted partial summary
judgment on plaintiffs' First Amendment claim because
they failed to raise a genuine dispute of material fact as to
whether regulations prohibiting materials with obscenity
for health or security reasons were unconstitutional,
including as applied to deny them access to the biker and
tattoo art magazines at issue in their complaint. See
Thornburgh v. Abbott, 490 U.S. 401, 416–17, 109 S.Ct.
1874, 104 L.Ed.2d 459 (1989); *Turner v. Safley*, 482 U.S.
78, 93, 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987).

The district court properly granted summary judgment on
plaintiffs' Fourteenth Amendment claim because they
failed to raise a triable dispute as to whether Ashker's
parole denial, Ashker's validation as a prison gang
affiliate, or both plaintiffs' lack of access to rehabilitative
programs in segregation denied them due process. See
Swarthout v. Cooke, — U.S. —, 131 S.Ct. 859,
862–63, 178 L.Ed.2d 732 (2011) (parole denial); *Bruce*,
351 F.3d at 1287–88 (gang validation); *Hoptowit v. Ray*,
682 F.2d 1237, 1254–55 (9th Cir.1982) (programming
access). The district court also properly concluded that
Troxell failed to raise a triable dispute as to whether the
continuing violations theory salvaged his time-barred due
process claim as to his gang validations. See *Knox v.*
Davis, 260 F.3d 1009, 1013–14 (9th Cir.2001).

The district court did not abuse its discretion in denying
three of plaintiffs' discovery motions for unduly broad,
burdensome, and confidential materials. See *Hallett v.*
Morgan, 296 F.3d 732, 751 (9th Cir.2002) (clearest
showing of actual and substantial prejudice needed to
reverse trial court's discovery rulings).

Plaintiffs' remaining contentions, including with respect
to being denied leave to file a motion for reconsideration
of summary judgment, are unpersuasive.

Plaintiffs' request to file a further response to defendants' citation of supplemental authority is denied.

Issues not raised on appeal are waived. *See Cook v. Schriro*, 538 F.3d 1000, 1014 n. 5 (9th Cir.2008).

All Citations

465 Fed.Appx. 718, 2012 WL 76879

****2 AFFIRMED.**

Footnotes

* The panel unanimously concludes this case is suitable for decision without oral argument. *See Fed. R.App. P. 34(a)(2)*.

** This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36–3.

End of Document