

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Althof v. Hanlin

575 F. App'x 789 (9th Cir. 2014) · Decided December 17, 2013

OPINION

PER CURIAM.

MEMORANDUM ** Tag Althof sued Douglas County Jail (“the Jail”) officers John Hanlin, Mike Root, Tim O’Kelly, and Mason Goodknight (collectively “the Defendants”), alleging the Defendants had deprived Althof of outdoor exercise during Althofs incarceration at the Jail.

The district court granted summary judgment on all of Althofs claims. Althof appeals the disposition of (1) the § 1983 claim based on the Eighth Amendment, and (2) the intentional infliction of emotional distress (“IIED”) claim.¹ Reviewing de novo, *Travelers Cas. & Sur. Co. of Am. v. Brenneke*, 551 F.3d 1132, 1137 (9th Cir.2009), we affirm.

The district court properly granted summary judgment on the § 1983 claim. The Defendants are entitled to qualified immunity on Althofs § 1983 claim, because the asserted constitutional right was not clearly established at the time of the alleged violation.² See *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). It is not clearly established that an inmate is entitled to outdoor exercise when he has proven to be violent, and *790the deprivation of outdoor exercise is in response to the plaintiffs violence.³ On the contrary, this court has held that even a deprivation of outdoor exercise “for most of a five-year period of incarceration” did not violate the Eighth Amendment, when the deprivation was “directly linked to [the prisoner’s] own misconduct, which raised serious and legitimate security concerns within the prison.” *LeMaire v. Maass*, 12 F.3d 1444, 1457-58 (9th Cir.1993).

The district court also did not err in granting summary judgment on Althofs IIED claim, because Althof did not present any evidence of the Defendants’ intent to cause him severe emotional distress. See *McGanty v. Staudenraus*, 321 Or. 532, 901 P.2d 841, 849 (1995). AFFIRMED. This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir.

R. 36-3.. Althof waived any appeal of his negligence claim by not presenting any argument or legal authority on it. See *Kohler v. Inter-Tel Techs.*, 244 F.3d 1167, 1182 (9th Cir.2001).. Because we affirm on this independent ground, we need not address Hanlin’s potential liability in a supervisory role..

We so conclude, even considering the events that occurred prior to July 8, 2008, the contested statute of limitations cut-off date.

