



Rattler v. Mecham

1990 | Cited 0 times | Ninth Circuit | October 23, 1990

MEMORANDUM

Leon R. Rattler, an Arizona state prisoner, appeals pro se the district court's order dismissing his 42 U.S.C. § 1983 action for failure to state a claim under Fed. R. Civ. P. 12(b)(6). Rattler contends that: (1) he was denied his first amendment right to practice religion because he was served pork and forced to share a cell with inmates not of his religion; (2) he was denied his due process rights to unbiased grievance procedures, to be moved to a minimum security facility, and regarding his personal property; (3) he was subjected to cruel and unusual punishment in violation of the eighth amendment because of crowded and unhealthy prison conditions; and (4) the district court judge was biased. We review de novo, *Kruso v. International Tel. & Tel. Corp.*, 872 F.2d 1416, 1421 (9th Cir. 1989), cert. denied, 110 S. Ct. 3217 (1990), and we affirm.

Rattler's contentions that the district court erred in dismissing his first, eighth, and fourteenth amendment claims are meritless. In an unpublished order filed July 6, 1989, the district court considered and addressed these issues. We affirm the dismissal based on the analysis set forth in the district court's well-reasoned order.¹

Rattler's contention that the district court judge was biased against him also lacks merit. A party must show extrajudicial bias or prejudice when seeking disqualification of a district court judge. *Thomassen v. United States*, 835 F.2d 727, 732 (9th Cir. 1987). Rattler presents no facts to support this contention, and argues only that the district judge was biased because he dismissed the action.²

Disposition

AFFIRMED.

* The panel unanimously finds this case is suitable for decision without oral argument. Fed. R. App. P. 34(a) and 9th Cir. R. 34-4.

1. The district court did not address Rattler's contention that the prison grievance procedure is biased, but we find that this contention lacks merit. While an impartial decision maker is a fundamental requirement of due process, the decision maker need not be an uninvolved person from outside of the institution involved in the dispute. See *Vitek v. Jones*, 445 U.S. 480, 496 (1980).

2. Rattler also contends that the dismissal of his action denied him a right to jury trial. Because we hold that the district



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court properly dismissed the action under Fed. R. Civ. P. 12(b)(6), this contention lacks merit.

