

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 05-1048

Crescenciano Pena,	*
	*
Appellant,	*
	* Appeal from the United States
v.	* District Court for the
	* District of Minnesota.
Dr. David Eduardy; Warden, FMC	*
Rochester,	* [UNPUBLISHED]
	*
Appellees.	*

Submitted: January 6, 2006
Filed: January 20, 2006

Before BYE, McMILLIAN¹, and RILEY, Circuit Judges.

PER CURIAM.

¹The Honorable Theodore McMillian died January 18, 2006. This opinion is being filed by the remaining judges of the panel pursuant to 8th Cir. Rule 47E.

Federal inmate Crescenciano Pena appeals the district court's² adverse grant of summary judgment in his Bivens³ action. We review de novo the grant of summary judgment, drawing all inferences in favor of Pena. See Jolly v. Knudsen, 205 F.3d 1094, 1096 (8th Cir. 2000). Having done so, we agree with the district court that the summary judgment record revealed no Eighth Amendment violation. See Pool v. Sebastian County, Ark., 418 F.3d 934, 942 (8th Cir. 2005) (prisoner must show more than even gross negligence, and mere disagreement with treatment decisions does not rise to level of constitutional violation); Long v Nix, 86 F.3d 761, 765 (8th Cir. 1996) (inmates do not have constitutional right to particular type of treatment; nothing in Eighth Amendment prevents prison physicians from exercising independent medical judgment).

We decline to consider whether the district court properly determined that Warden Constance Reece was not properly served, because Pena has not challenged that determination. See Primary Care Investors, Seven, Inc. v. PHP Healthcare Corp., 986 F.2d 1208, 1212 (8th Cir. 1993). We also decline to consider Pena's newly raised claim that he suffered substantive due process violations. See Stone v. Harry, 364 F.3d 912, 914 (8th Cir. 2004) (claims not presented to district court may not be advanced on appeal).

Accordingly, we affirm. See 8th Cir. R. 47B.

²The Honorable Paul A. Magnuson, United States District Judge for the District of Minnesota, adopting the report and recommendations of the Honorable Susan Richard Nelson, United States Magistrate Judge for the District of Minnesota.

³Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971).