

MAR 28 2011

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

4820 HEAVEN AVENUE, WOODLAND  
HILLS, CALIFORNIA, the premises  
known as, and several other premises  
searched,

Defendant,

and

FRANK S. CLEMENT, AKA Frank  
Clement,

Claimant - Appellant.

No. 09-56881

D.C. No. 2:04-cv-06586-GHK-  
AJW

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
George H. King, District Judge, Presiding

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

Submitted March 8, 2011\*\*

Before: FARRIS, O'SCANNLAIN, and BYBEE, Circuit Judges.

Frank S. Clement, a California state prisoner, appeals pro se from the district court's order dismissing for failure to prosecute his petition seeking the return of property. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *Pagtalunan v. Galaza*, 291 F.3d 639, 640 (9th Cir. 2002). We vacate and remand.

The district court dismissed Clement's action sua sponte for failure to prosecute, but the docket reflects that the delay in prosecution was the result of the district court's failure to make any ruling on Clement's petition. Accordingly, we vacate and remand for further proceedings.

Clement's remaining contentions are unpersuasive.

Clement shall bear his costs on appeal.

**VACATED and REMANDED.**

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