

DEC 10 2013

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>NORRIS VIRGIL LEE,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>BALLESTEROS, Licensed Vocational Nurse at Corcoran State Hospital,</p> <p>Defendant - Appellee.</p>
--

No. 12-17543

D.C. No. 1:12-cv-00808-SKO

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Sheila K. Oberto, Magistrate Judge, Presiding**

Submitted November 19, 2013***

Before: CANBY, TROTT, and THOMAS, Circuit Judges.

California state prisoner Norris Virgil Lee appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging deliberate

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

** Plaintiff consented to proceed before a magistrate judge. See 28 U.S.C. § 636(c).

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

indifference to his medical needs. We have jurisdiction under 28 U.S.C § 1291. We review de novo a dismissal under 28 U.S.C. § 1915A. *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). We reverse and remand.

The district court erred in dismissing Lee's action because Lee alleged that, despite his repeated pleas, defendant consciously and deliberately disregarded a serious risk to his health arising from diabetes by refusing to administer his prescribed and regularly scheduled insulin injection. *See Farmer v. Brennan*, 511 U.S. 825, 837, 845 (1994) (prison officials act with deliberate indifference when they know of and disregard an excessive risk to inmate health; prisoner need not await a tragic event before obtaining relief for being exposed to danger).

REVERSED and REMANDED.