

APR 15 2014

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>NICHOLAS GARCIA,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>SPOKANE COUNTY; et al.,</p> <p>Defendants - Appellees.</p>
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No. 12-36074

D.C. No. 2:10-cv-00349-TOR

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of Washington  
Thomas O. Rice, District Judge, Presiding

Submitted April 7, 2014\*\*

Before: TASHIMA, GRABER, and IKUTA, Circuit Judges.

Nicholas Garcia appeals pro se from the district court’s judgment dismissing his 42 U.S.C. § 1983 action alleging constitutional violations during his detention at Spokane County Jail. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion a dismissal for failure to comply with court orders,

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

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

*Pagtalunan v. Galaza*, 291 F.3d 639, 640 (9th Cir. 2002), and we reverse and remand.

The district court dismissed this action, in part, because Garcia failed to provide witness and exhibit lists and because Garcia failed to appear at the pre-trial conference. However, as to the first reason, Garcia did provide lists of his proposed witnesses and exhibits in his pre-trial report, albeit not at the time and in the format requested by the district court. As to the second, Garcia provided an excuse as to why he was not at the pre-trial conference. Under these circumstances, we conclude that dismissal was an abuse of discretion. *See id.* at 642-43 (listing factors to consider before dismissing for failure to comply with a court order); *Oliva v. Sullivan*, 958 F.2d 272, 273 (9th Cir. 1992) (“Because dismissal is a harsh penalty, it should be imposed as a sanction only in extreme circumstances.”). Accordingly, we reverse and remand for further proceedings.

Garcia’s motion to add district court documents to the appellate record, filed on September 5, 2013, is granted.

**REVERSED and REMANDED.**