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U.S. COURT OF APPEALS

## NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSEPH L. MIZZONI,

Plaintiff - Appellant,

v.

STATE OF NEVADA; et al.,

Defendants - Appellees.

No. 13-16471

D.C. No. 3:11-cv-00358-HDM-  
WGC

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Nevada  
Howard D. McKibben, District Judge, Presiding

Submitted April 22, 2015\*\*

Before: GOODWIN, BYBEE, and CHRISTEN, Circuit Judges.

Joseph L. Mizzoni, a Nevada state prisoner, appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging deliberate indifference to his serious medical needs. We have jurisdiction under 28 U.S.C.

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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).

§ 1291. We review de novo. *Colwell v. Bannister*, 763 F.3d 1060, 1065 (9th Cir. 2014). We vacate and remand.

In granting summary judgment to defendants on Mizzoni’s claim that Bannister was deliberately indifferent to his left eye cataract condition, the district court did not have the benefit of our recent decision in *Colwell*, 763 F.3d at 1063 (concluding that “the blanket, categorical denial of medically indicated surgery solely on the basis of an administrative policy that ‘one eye is good enough for prison inmates’ is the paradigm of deliberate indifference.”). We vacate and remand for the district court to consider in the first instance the application of *Colwell* to Mizzoni’s Eighth Amendment claim against Bannister. Although not raised by Mizzoni in his appeal, we suggest that on remand the district court reconsider its decision whether to appoint counsel.

Because Mizzoni states in his reply brief that he “does not argue and recommends dismissal” of his claim against defendant Robertson, we do not address that claim.

Mizzoni’s pending requests for judicial notice are denied.

Each party shall bear its own costs on appeal.

**VACATED and REMANDED.**