

AUG 03 2015

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SAUL BARRIOS PEREZ,

Plaintiff - Appellant,

v.

DILL, Assistant Warden; et al.,

Defendants - Appellees.

No. 13-16135

D.C. No. 1:07-cv-01794-LJO-
BAM

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O'Neill, District Judge, Presiding

Submitted July 21, 2015**

Before: CANBY, BEA, and MURGUIA, Circuit Judges.

California state prisoner Saul Barrios Perez appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging an Eighth Amendment conditions-of-confinement claim. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion a dismissal for failure to

* 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).

comply with a court order, *Pagtalunan v. Galaza*, 291 F.3d 639, 640 (9th Cir. 2002), and we vacate and remand.

The district court dismissed this action because Perez failed to file his pre-trial statement. However, in his response to the order to show cause, Perez explained that his failure to comply with the scheduling order was attributable to prison officials' interference with his ability to prosecute his case. 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 vacate and remand for further proceedings.

Defendants shall bear the costs on appeal.

VACATED and REMANDED.