

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 24 2017

FOR THE NINTH CIRCUIT

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

MARTINEZ AYTCH,

No. 16-16157

Plaintiff-Appellant,

D.C. No. 3:15-cv-00623-RCJ-VPC

v.

MEMORANDUM*

G. CARPENTER, RN, DONS; et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the District of Nevada
Robert Clive Jones, District Judge, Presiding

Submitted April 11, 2017**

Before: GOULD, CLIFTON, and HURWITZ, Circuit Judges.

Nevada state prisoner Martinez Aytch appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging constitutional claims.

We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's dismissal under 28 U.S.C. § 1915A. *Hamilton v. Brown*, 630 F.3d 889, 892

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

(9th Cir. 2011). We vacate and remand.

The district court screened and dismissed Aytch's action for failure to exhaust administrative remedies, finding that Aytch filed the complaint before he received a response to his first level grievance. However, Aytch alleged that the prison failed to respond to his informal grievances and that administrative remedies were effectively unavailable to him. *See Sapp v. Kimbrell*, 623 F.3d 813, 826 (9th Cir. 2010) (PLRA does not require exhaustion when remedies are "effectively unavailable"); *Brown v. Valoff*, 422 F.3d 926, 943 n.18 (9th Cir. 2005) ("Delay in responding to a grievance, particularly a time-sensitive one, may demonstrate that no administrative process is in fact available."). Because the district court did not address whether administrative remedies were effectively unavailable to Aytch, we vacate and remand for further proceedings.

VACATED and REMANDED.