

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 22 2018

FOR THE NINTH CIRCUIT

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

LEROY MCFADDEN,

Plaintiff-Appellant,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

Defendant-Appellee.

No. 16-35666

D.C. No. 9:15-cv-0082-DLC

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Dana L. Christensen, Chief Judge, Presiding

Submitted February 9, 2018**
Seattle, Washington

Before: M. SMITH and MURGUIA, Circuit Judges, and GORDON,*** District
Judge.

Leroy McFadden appeals from the district court's denial of his motion for

* 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).

*** The Honorable Andrew P. Gordon, United States District Judge for
the District of Nevada, sitting by designation.

summary judgment and affirmance of Acting Commissioner Berryhill's denial of disability insurance benefits. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

We review the district court's order *de novo*. *Molina v. Astrue*, 674 F.3d 1104, 1110 (9th Cir. 2012). "An ALJ's disability determination should be upheld unless it contains legal error or is not supported by substantial evidence." *Garrison v. Colvin*, 759 F.3d 995, 1009 (9th Cir. 2014). Legal errors are harmless if they do not alter the ALJ's final disability determination. *Molina*, 674 F.3d at 1115.

The ALJ improperly discounted the medical opinion of McFadden's treating physician, Dr. Vanichkachorn, leading the ALJ to miscalculate McFadden's RFC. However, this error is harmless. The vocational expert testified at Step 5 of the disability evaluation that even accounting for the additional limitations suggested by Dr. Vanichkachorn, work exists in the national economy that McFadden could perform. Therefore, the ALJ's errors did not change the ultimate non-disability determination. The ALJ did not otherwise err in his findings and determinations.

AFFIRMED.