

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 23 2018

FOR THE NINTH CIRCUIT

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

JOHN ROBERT GANOE,

Plaintiff-Appellant,

v.

T. ABREU; et al.,

Defendants-Appellees.

No. 17-16826

D.C. No. 2:16-cv-00019-GEB-CKD

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Garland E. Burrell, Jr., District Judge, Presiding

Submitted February 13, 2017**

Before: LEAVY, FERNANDEZ, and MURGUIA, Circuit Judges.

John Robert Ganoe appeals pro se from the district court's summary judgment for failure to exhaust administrative remedies in his 42 U.S.C. § 1983 action alleging deliberate indifference to his safety. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Albino v. Baca*, 747 F.3d 1162, 1168 (9th Cir.

* 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).

2014) (en banc). We vacate and remand.

The district court concluded that Ganoë failed to exhaust administrative remedies because his grievance was untimely, and he failed to raise a genuine dispute of material fact as to whether administrative remedies were effectively unavailable. However, the record shows that on August 31, 2015, Ganoë submitted a grievance explaining why he did not timely grieve the three beatings that gave rise to this action. Specifically, Ganoë explained that he lacked the necessary forms, he was permanently blinded from one of the beatings and recovering in the infirmary for three months, and he suffered emotional trauma as a result of the three beatings. *See Sapp v. Kimbrell*, 623 F.3d 813, 823 (9th Cir. 2010) (explaining that the Prison Litigation Reform Act does not require exhaustion when circumstances render administrative remedies “effectively unavailable”); *Marella v. Terhune*, 568 F.3d 1024, 1027 (9th Cir. 2009) (administrative remedies may be effectively unavailable where circumstances render the prisoner unable to initiate the grievance process in a timely manner). Because the district court did not expressly consider Ganoë’s evidence explaining his delay in filing the grievance, we vacate and remand for further proceedings.

Appellees shall bear the costs on appeal.

VACATED and REMANDED.