

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 26 2022

FOR THE NINTH CIRCUIT

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

DARONTA TYRONE LEWIS,

No. 20-17394

Plaintiff-Appellant,

D.C. No. 2:20-cv-00399-TLN-
DMC

v.

P. GARCIA; et al.,

MEMORANDUM*

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of California
Troy L. Nunley, District Judge, Presiding

Submitted January 19, 2022**

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

California state prisoner Daronta Tyrone Lewis appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging violations of the Eighth Amendment. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *In re Phenylpropanolamine (PPA) Prods. Liab.*

* 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).

Litig., 460 F.3d 1217, 1233-34 (9th Cir. 2006) (dismissal as a sanction under Fed. R. Civ. P. 37); *Ash v. Cvetkov*, 739 F.2d 493, 495 (9th Cir. 1984) (dismissal for failure to prosecute). We vacate and remand.

The district court dismissed Lewis’s action for failure to prosecute because Lewis had failed to follow or acknowledge the court’s orders. However, in his notice of appeal, Lewis explained that he had not received the court’s order to submit an application for leave to proceed in forma pauperis due to factors outside of his control. *See Hernandez v. City of El Monte*, 138 F.3d 393, 400 (9th Cir. 1998) (“Dismissal is a harsh penalty,” appropriate “only in extreme circumstances” of “unreasonable delay.”). We vacate the judgment and remand for further proceedings.

VACATED AND REMANDED.