

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 23 2024

FOR THE NINTH CIRCUIT

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

ETUATE SEKONA,

Plaintiff-Appellant,

v.

F. CUSTINO, Correctional Officer, Mule
Creek State Prison; F. ANGLE, Correctional
Officer, Mule Creek State Prison; L. SNOW,
Correctional Officer, Mule Creek State
Prison; J. CHARON, Lieutenant, Mule Creek
State Prison,

Defendants-Appellees.

No. 23-15848

D.C. No. 2:16-cv-00517-TLN-DMC

MEMORANDUM*

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

Submitted September 17, 2024**

Before: WARDLAW, BADE, and H.A. THOMAS, Circuit Judges.

Etuate Sekona appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging constitutional claims arising from injuries he

* 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).

suffered in prison. We have jurisdiction under 28 U.S.C § 1291. We review for an abuse of discretion the district court's dismissal for failure to prosecute or comply with court orders. *Pagtalunan v. Galaza*, 291 F.3d 639, 640 (9th Cir. 2002) (failure to comply with court order); *Al-Torki v. Kaempfen*, 78 F.3d 1381, 1384 (9th Cir. 1996) (failure to prosecute). We vacate and remand.

The district court dismissed Sekona's action because it determined that Sekona did not file a pretrial status report as directed by its November 15, 2022 order granting an extension of time to file a status report. However, the record reflects that Sekona mailed a status report on November 7, 2022, which the district court appeared to construe as solely a motion for a trial date. In his objections to the magistrate judge's findings and recommendations, Sekona explained that he attempted to file another status report in December 2022 and attached evidence of this attempt to comply. The district court did not address either attempt to comply. Moreover, the record does not reflect that the court warned Sekona that dismissal would result from disobeying the November 15, 2022 order. *See Pagtalunan*, 291 F.3d at 642-43 (discussing factors to be considered before dismissing as a sanction). We vacate the judgment and remand for further proceedings.

We do not consider arguments and allegations raised for the first time on appeal, or documents not presented to the district court. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009); *United States v. Elias*, 921 F.2d 870, 874

(9th Cir. 1990).

Sekona's motion for appointment of counsel (Docket Entry Nos. 26 and 27) is denied. Sekona's motions for an extension of time to file the reply brief (Docket Entry No. 33) and to file an oversized reply brief (Docket Entry No 35) are granted.

The parties will bear their own costs on appeal.

VACATED and REMANDED.