

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 27 2017

FOR THE NINTH CIRCUIT

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

BRANDON LEE STANLEY,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA; et al.,

Defendants-Appellees.

No. 15-35926

D.C. No. 2:15-cv-00256-MJP

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Marsha J. Pechman, District Judge, Presiding

Submitted April 11, 2017**

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

Brandon Lee Stanley appeals pro se from the district court's judgment dismissing for failure to exhaust administrative remedies his civil rights action arising from defendants' treatment of his broken hand. We have jurisdiction under 28 U.S.C. § 1291. We vacate and remand.

On appeal, Stanley argues that he complied with the administrative

* 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).

exhaustion requirement as to his claim arising under the Federal Tort Claims Act. In response, defendants have expressly waived the affirmative defense of exhaustion that they asserted in the district court, and request that we vacate and remand for further proceedings. Accordingly, we vacate the district court's judgment and remand the case for further proceedings.

Each party shall bear its own costs on appeal.

VACATED and REMANDED.