

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 4 2017

FOR THE NINTH CIRCUIT

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

ANTHONY PIERCE GRIGSBY,

Plaintiff-Appellant,

v.

HECTOR DANIEL LUDI, Medical Doctor,
Attending Staff Physician, individual and
official capacity; et al.,

Defendants-Appellees.

No. 15-56355

D.C. No. 5:14-cv-02316-JAK-JC

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
John A. Kronstadt, District Judge, Presiding

Submitted September 26, 2017**

Before: SILVERMAN, TALLMAN, and N.R. SMITH, Circuit Judges.

California state prisoner Anthony Pierce Grigsby appeals pro se from the district court's judgment dismissing for failure to prosecute his 42 U.S.C. § 1983 action alleging deliberate indifference to a serious medical need. We have

* 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).

jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *Omstead v. Dell, Inc.*, 594 F.3d 1081, 1084 (9th Cir. 2010). We vacate and remand.

Although the district court did not abuse its discretion by dismissing Grigsby's action for failure to prosecute, *see id.*, Grigsby attached to his notice of appeal prison mail logs and a declaration indicating that Grigsby never received the district court's February 19, 2015 or March 20, 2015 orders. Because the district court did not have the benefit of these documents, we vacate the judgment of dismissal and remand so the district court can permit Grigsby to file a response to the order to show cause.

VACATED and REMANDED.