

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 16 2017

FOR THE NINTH CIRCUIT

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

LEON-MICHAEL THOLSON,

No. 16-36036

Plaintiff-Appellant,

D.C. No. 3:16-cv-00243-RRB

v.

MEMORANDUM*

KEVIN L. DILLON; et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the District of Alaska
Ralph R. Beistline, District Judge, Presiding

Submitted August 9, 2017**

Before: SCHROEDER, TASHIMA, and M. SMITH, Circuit Judges.

Alaska state prisoner Leon-Michael Tholson appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging retaliation and deliberate indifference to his safety. We have jurisdiction under 28 U.S.C. § 1291.

We review de novo. *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000)

* 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).

(dismissal under 28 U.S.C. § 1915A); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (order) (dismissal under 28 U.S.C. § 1915(e)(2)). We vacate and remand.

Although the district court properly concluded that Tholson failed to state deliberate indifference and retaliation claims, the district court abused its discretion in dismissing Tholson’s action without leave to amend because it is not absolutely clear that the deficiencies could not be cured by amendment. *See Lucas v. Dep’t of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995) (“Unless it is absolutely clear that no amendment can cure the defect, . . . a pro se litigant is entitled to notice of the complaint’s deficiencies and an opportunity to amend prior to dismissal of the action.”); *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (setting forth standard of review). We vacate the judgment and remand for the district court to provide Tholson with an opportunity to amend.

In light of our disposition, we do not consider the district court’s order denying Tholson’s motion for preliminary injunctive relief.

VACATED and REMANDED.