UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 19 2018

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

JOHN ADAM GRAVES,	No. 17-36022
Plaintiff-Appellant,	D.C. No. 2:17-cv-00050-SEH
v.	
WADED CRUZADO, Dr.; et al.,	MEMORANDUM[*]
Defendants-Appellees.	

Appeal from the United States District Court
for the District of Montana
Sam E. Haddon, District Judge, Presiding

Submitted June 12, 2018[**]

Before: RAWLINSON, CLIFTON and NGUYEN, Circuit Judges.

John Adam Graves appeals from the district court's judgment dismissing

with prejudice for failure to prosecute his 42 U.S.C. § 1983 action alleging federal

and state law claims. We have jurisdiction under 28 U.S.C. § 1291. We review for

an abuse of discretion. *Al-Torki v. Kaempen*, 78 F.3d 1381, 1384 (9th Cir. 1996).

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[*]   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).

We vacate and remand.

The district court dismissed Graves's action with prejudice for failure to prosecute after Graves and his counsel failed to comply with the district court's November 9, 2017 order to show cause why the action should not be dismissed for failure to prosecute. We conclude that the less drastic sanction of dismissal without prejudice is appropriate in this case. *See id.* at 1384-85 (discussing factors to be considered before dismissing case for failure to prosecute, including the availability of less drastic sanctions); *see also In re Eisen*, 31 F.3d 1447, 1451 (9th Cir. 1994) (stating that if district court does not make specific findings on relevant factors, this court reviews the record independently).

We vacate the district court's dismissal with prejudice and remand to the district court to enter judgment dismissing the action without prejudice.

The parties shall bear their own costs on appeal.

VACATED and REMANDED.