

MAR 09 2009

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

THOMAS T. ALFORD,

Plaintiff - Appellant,

v.

I. D. CLAY, Warden of SCC,

Defendant - Appellee.

No. 08-17485

D.C. No. 1:07-cv-00831-LJO

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O'Neill, District Judge, Presiding

Submitted February 23, 2009**

Before: KOZINSKI, Chief Judge, HAWKINS and GOULD, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

On June 3, 2008, the Magistrate Judge issued findings and recommendations that appellant's complaint be dismissed for failure to state a claim. On June 30, 2008, the Magistrate Judge vacated his earlier recommendation of dismissal and granted appellant an extension of time to file an amended complaint. Appellant filed an amended complaint as directed on July 31, 2008. On September 29, 2008, the district court adopted the June 3, 2008 findings and recommendations, which had been vacated by the Magistrate Judge. This appears to have been an oversight. Because the Magistrate Judge vacated his initial recommendation and because appellant filed an amended complaint as directed, we remand to the district court to consider the amended complaint filed on July 31, 2008.

REMANDED.