

AUG 10 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DAVID BARNARD,

Plaintiff - Appellant,

v.

MICHAEL GIBBONS; et al.,

Defendants - Appellees.

No. 06-55192

D.C. No. CV-05-05611-GAF

MEMORANDUM*

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

Argued and Submitted January 16, 2009
San Francisco, California

Before: WALLACE, FARRIS and McKEOWN, Circuit Judges.

Barnard appeals from the district court's dismissal of his civil rights action for failure to exhaust administrative remedies, as required by the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e(a). The district court had jurisdiction

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

pursuant to 28 U.S.C. § 1331. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we reverse and remand.

Individuals who bring an action after their release from custody are not required by the PLRA to exhaust administrative remedies. *Talamantes v. Leyva*, No. 06-55939 (9th Cir. 2009). Because Barnard filed this action after his release from custody, he was not required to exhaust administrative remedies. We therefore remand this action to the district court to evaluate its merits.

Because Barnard, as a former prisoner, was not required to exhaust administrative remedies, we need not decide the other issues Barnard raised on appeal, including whether he was required to exhaust administrative remedies concerning his pre-arrest excessive force claim, whether defendants failed to meet a burden of proving exhaustion, and whether the district court erred in dismissing the case without holding a hearing.

REVERSED AND REMANDED.