

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 08 2010

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

KENNETH EVANS,

Plaintiff - Appellant,

v.

LIEUTENANT EVANS; et al.,

Defendants - Appellees.

No. 08-55431

D.C. No. 2:05-CV-05044-DDP-SS

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dean D. Pregerson, District Judge, Presiding

Submitted December 15, 2009**

Before: GOODWIN, WALLACE, and CLIFTON, Circuit Judges.

Kenneth Evans, a California state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging denial of access

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2). Accordingly, Evans's request for oral argument is denied.

to the courts and due process. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Knappenberger v. City of Phoenix*, 566 F.3d 936, 939 (9th Cir. 2009). We affirm.

The district court properly dismissed the action because Evans failed to show that he suffered an actual injury as a result of defendants' delay in processing his legal mail and in providing him with a requested address. *See Lewis v. Casey*, 518 U.S. 343, 348 (1996) (explaining that "actual injury" is "actual prejudice with respect to contemplated or existing litigation, such as the inability to meet a filing deadline or to present a claim") (citation and internal quotation marks omitted).

Evans's remaining contentions are unpersuasive.

Evans's request for appointment of counsel is denied.

AFFIRMED.