

AUG 02 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| |
|---|
| <p>LOUIS EUGENE CUNNINGHAM,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>SGT. FLETCHER, Sgt. Mail Room Operations; et al.,</p> <p>Defendants - Appellees.</p> |
|---|

No. 08-35913

D.C. No. 1:05-cv-00515-FVS

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
Fred L. Van Sickle, District Judge, Presiding

Submitted July 19, 2010**

Before: B. FLETCHER, REINHARDT, and WARDLAW, Circuit Judges.

Louis Eugene Cunningham, an Idaho state prisoner, appeals pro se from the district court’s judgment dismissing his 42 U.S.C. § 1983 action for failure to effect service of process. We have jurisdiction under 28 U.S.C. § 1291. We

* 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).

review for an abuse of discretion. *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1014 (9th Cir. 2002). We reverse and remand.

Cunningham substantially complied with Rule 4 of the Federal Rules of Civil Procedure by serving the summons and the original complaint on a Deputy Attorney General, and attempting to serve the operative complaint on Michael J. Elia, who was appointed Special Deputy Attorney General for the purpose of representing defendants in this case. *See Travelers Cas. & Sur. Co. of Am. v. Brenneke*, 551 F.3d 1132, 1135 (9th Cir. 2009) (so long as there is substantial compliance with Rule 4 and the defendant receives sufficient notice of the complaint, Rule 4 is to be liberally construed to uphold service); Idaho Admin. Code r.06.01.01.106 (2010) (requiring service of summons, complaints, and subpoenas against or upon the Idaho Department of Corrections and its employees to be made upon the deputy attorneys general assigned to the Department in the manner and form required by state and federal rules of procedure). Accordingly, we reverse the judgment and remand for further proceedings.

REVERSED and REMANDED.