

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 04 2008

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

DIALLO E. UHURU,

Plaintiff - Appellant,

v.

ALAN KHAN; et al.,

Defendants - Appellees.

No. 06-56041

D.C. No. CV-04-02574-JAH

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
John A. Houston, District Judge, Presiding

Submitted July 22, 2008**

Before: B. FLECTCHER, THOMAS and WARDLAW, Circuit Judges.

California state prisoner Diallo E. Uhuru appeals pro se from the district court's judgment dismissing without prejudice his 42 U.S.C. § 1983 action for

* 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).

failure to prosecute. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion, *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988) (per curiam), and we affirm.

The district court did not abuse its discretion in dismissing Uhuru's action pursuant to Fed. R. Civ. P. 4(m) because he failed to establish "good cause" for his failure to serve the summons and complaint on the defendants within 120 days.

Fed. R. Civ. P. 4(m); *see also Boudette v. Blandford*, 923 F.2d 754, 755 (9th Cir. 1991) (holding that good cause means, at a minimum, excusable neglect).

AFFIRMED.