

DEC 28 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SOL G. GARCIA,

Plaintiff - Appellant,

v.

G. HANSEN; et al.,

Defendants - Appellees.

No. 06-17284

D.C. No. CV-04-01927-FCD/GGH

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Frank C. Damrell, District Judge, Presiding

Submitted December 20, 2007**

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

California state prisoner Sol G. Garcia appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging medical indifference by various prison staff. We have jurisdiction under 28 U.S.C. § 1291.

* 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).

We review de novo a district court's dismissal for failure to state a claim pursuant to 28 U.S.C. § 1915A. *Weilburg v. Shapiro*, 488 F.3d 1202, 1205 (9th Cir. 2007).

We review for an abuse of discretion a district court's dismissal for failure to comply with service of process requirements under Fed. R. Civ. P. 4. *Townsel v. Contra Costa County*, 820 F.2d 319, 320 (9th Cir. 1987). We affirm.

The district court properly dismissed Garcia's action as to defendant Hansen after Garcia failed to include allegations against Hansen in his second amended complaint. *See Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997) (order) ("A plaintiff waives all claims alleged in a dismissed complaint which are not realleged in an amended complaint.").

The district court did not abuse its discretion in dismissing the action without prejudice as to the remaining defendant because Garcia did not timely serve Pompey even after he was given an extension of time to do so. *See Fed. R. Civ. P. 4(m)*; *see also Hason v. Medical Bd. of Cal.*, 279 F.3d 1167, 1174 (9th Cir. 2002) (permitting dismissal of complaint if process is not served within requisite time period).

The district court did not abuse its discretion in denying Garcia's request to appoint counsel to help him locate defendant Pompey because the circumstances Garcia describes are not exceptional. *See United States v. McQuade*, 647 F.2d 938,

940 (9th Cir. 1981) (per curiam) (noting motions for appointment of counsel are granted only in exceptional circumstances).

AFFIRMED.