

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 15 2009

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

SCOTT C. SMITH,

Plaintiff - Appellant,

v.

CAROLINE HARDY; et al.,

Defendants - Appellees.

No. 07-35430

D.C. No. CV-06-05455-RBL

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Ronald B. Leighton, District Judge, Presiding

Submitted December 17, 2008**

Before: WALLACE, TROTT and RYMER, Circuit Judges.

Scott C. Smith appeals pro se from the district court's order granting summary judgment in favor of defendants in his 42 U.S.C. § 1983 action alleging that prison officials intercepted a letter in violation of the First and Fourteenth

* 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).

Amendments. We review the district court's decision to grant summary judgment de novo, *see Prison Legal News v. Lehman*, 397 F.3d 692, 698 (9th Cir. 2005), and we reverse and remand.

Viewed in the light most favorable to Smith, the intercepted letter did not demonstrate an attempt by Smith to solicit money or goods in violation of Department of Corrections Policy 450.100, § VI(A)(6), and therefore the district court erred in granting summary judgment in favor of Defendants on all claims on that ground. *See Horphag Research Ltd. v. Garcia*, 475 F.3d 1029, 1035 (9th Cir. 2007) ("In reviewing an order granting summary judgment, we view the evidence in the light most favorable to the nonmoving party, drawing all reasonable inferences in his favor.").

The district court did not explicitly address qualified immunity or Smith's third claim for failure to supervise and train. On remand, the district court shall consider both in light of this memorandum disposition.

REVERSED and REMANDED.