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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

MICHAEL ALLEN,

Plaintiff and Appellant,

v.

ADAMS, as Warden, etc., et al.,

Defendants and Respondents.

H041580

(Monterey County

Super. Ct. No. M119321)

Appellant is Michael Allen, and is an inmate at Salinas Valley State Prison. He brings an appeal in propria persona, seeking reversal of the trial court’s judgment following dismissal of his complaint for civil rights violations. No respondent’s brief was filed in this case.

**STATEMENT OF THE CASE**

Appellant filed a complaint against Warden Adams at Salinas Valley Prison for civil rights violations pursuant to 42 U.S.C. § 1983 in Monterey County Superior Court on August 13, 2012. The complaint alleged the physician’s assistant at the prison denied appellant medical accommodations including use of the “bottom bunk,” a “back brace,” and a “cane.” The complaint also alleged that appellant was previously provided these accommodations by doctor’s order in 2008, but that the order had expired.

Following the filing of the complaint, the matter was set for a case management conference on January 29, 2013. Appellant did not appear for this conference, and

provided no proof that defendants had been served with the complaint. The court set the matter for a hearing on an order to show cause why the matter should not be dismissed for lack of service. The hearing was set for September 12, 2014. The court conducted a hearing on the order to show cause on September 12, 2014. Appellant did not appear, and there was no proof that defendants had been served. The court dismissed the matter, and entered judgment against appellant. Appellant filed a notice of appeal on October 16, 2014.

### **DISCUSSION**

Appellant's brief in this case is devoted almost entirely to the merits of his civil rights action against the warden of Salinas Valley Prison. Appellant devotes little time to issue on appeal, which is whether the trial court erred in dismissing his case for failure to serve defendants. With regard to this issue, appellant states: "Appellant's mail was lost, or delayed at the prison, there was no means to appear physically in the court, and further Appellant's attempts at effecting basic service of defendants, or obtaining even the most rudimentary [*sic*] elements of discovery (i.e. addresses for service of process) were thwarted, or simply denied."

Here, the trial court dismissed the action pursuant to Code of Civil Procedure section 583.410, which provides the court discretion to dismiss an action for delay in prosecution, and 583.420, which provides for the computation of time for the purposes of evaluating delay. Code of Civil Procedure section 583.420 provides in relevant part: "The court may not dismiss an action pursuant to this article for delay in prosecution except after one of the following conditions has occurred: [¶] (1) Service is not made within two years after the action is commenced against the defendant." (Code of Civ. Proc., § 583.420, subd. (a)(1).)

The record shows that appellant filed the complaint in this case on August 13, 2012. The court set the matter for an order to show cause on

September 12, 2014, presumably to give appellant time to serve the defendants. The court dismissed the matter on that date, more than two years after the complaint was filed.

Appellant has not met his burden to demonstrate that the trial court erred in dismissing his complaint for delay in prosecution. Other than to briefly state that his mail was lost in prison, and that his efforts to serve defendants were “thwarted,” appellant makes no reasoned argument as to why the trial court erred in dismissing his complaint. Because appellant has failed to show error, the presumption of correctness remains and the challenged order must be upheld. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574-575.)

The fact that appellant is representing himself does not diminish his burden to establish error on appeal. While the law permits a party to act as his or her own attorney, “ ‘[s]uch a party is to be treated like any other party and is entitled to the same, but no greater[,] consideration than other litigants and attorneys. [Citation.]’ [Citation.] Thus, as is the case with attorneys, pro[] per[] litigants must follow correct rules of procedure. [Citations.]” (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1247.) Having failed to show that the trial court erred, appellant is not entitled to reversal.

#### **DISPOSITION**

The judgment is affirmed.

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RUSHING, P.J.

WE CONCUR:

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ELIA, J.

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WALSH, J.\*

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\* Judge of the Santa Clara County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.