9th cir court of Appeals No. 23-1831

Appendix-A.

Judgemet Setember 23, 2025

For Supreme Court of The United States

Carlos A. Ortega
#210931-2 T-10
2100 Napa Vallejo-Hwy
Napa, CA. 94558

Dated
10/10/25

NOT FOR PUBLICATION

FILED

SEP 23 2025

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARLOS A. ORTEGA, Plaintiff - Appellant, v. COUNTY OF SANTA CLARA; EDWARD FLORES, Chief of Corrections; DAVID SEPUL-VEDA, Complex Commander Captain; A. FLORES, Correctional Officer; J. DIAZ, Correctional Officer; MELEK, Correctional Officer; DUGAMIS, Correctional Officer; DEPARTMENT OF CORRECTIONS OFFICERS, Defendants - Appellees.	No. 23-1831 D.C. No. 4:19-cv-00319-HSG MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Haywood S. Gilliam, Jr., District Judge, Presiding

Submitted September 17, 2025**

Before: SILVERMAN, OWENS, and BRESS, Circuit Judges.

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Carlos A. Ortega appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging excessive force by jail officials while Ortega was incarcerated at Santa Clara County Jail. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's summary judgment, including the court's conclusion that the action was barred by the statute of limitations, *Hernandez v. Spacelabs Med., Inc.*, 343 F.3d 1107, 1112 (9th Cir. 2003), and the court's decision not to apply equitable tolling, *Hensley v. United States*, 531 F.3d 1052, 1056 (9th Cir. 2008). We affirm.

The district court properly granted summary judgment because Ortega filed this action after the applicable statute of limitations and did not raise a genuine dispute of material fact as to any basis for tolling. *See TwoRivers v. Lewis*, 174 F.3d 987, 991 (9th Cir. 1999) ("[F]ederal courts borrow the statute of limitations for § 1983 claims applicable to personal injury claims in the forum state."); Cal. Civ. Proc. Code § 335.1 (setting forth two-year statute of limitations for personal injury claims); Cal. Code Civ. Proc. § 352(a) (permitting statutory tolling when "at the time the cause of action accrued," plaintiff "lack[ed] the legal capacity to make decisions"); *Alcott Rehab. Hosp. v. Superior Ct.*, 112 Cal. Rptr. 2d 807, 812 (Ct. App. 2001) (explaining that a plaintiff lacks legal capacity when they are "incapable of . . . transacting business or understanding the nature or effects of [their] acts"); *see also Fink v. Shedler*, 192 F.3d 911, 916 (9th Cir. 1999) (setting

forth requirements for equitable tolling under California law).

AFFIRMED.

United States District Court Northern District
OF California

Appendix-B.

Judgement November 27, 2019
and
July 26, 2023

For Supreme Court OF The United States

Carlos A. Ortega
#21031-2 T-10
3100 Napa Valley-Hwy
Napa, CA. 94558

Dated
10/10/25

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CARLOS A. ORTEGA, Plaintiff, v. A. FLORES, et al., Defendants.	Case No. 19-cv-00319-HSG **JUDGMENT**

For the reasons set forth in the Order Granting Defendants' Motion to Dismiss, this action is DISMISSED as barred by the statute of limitations. The Clerk shall enter judgment in favor of defendants and against plaintiff

IT IS SO ORDERED AND ADJUDGED.

Dated: 11/27/2019

Haywood S. Gilliam, Jr.

HAYWOOD S. GILLIAM, JR.
United States District Judge

Judgment 5 copies
Dismiss 5 copies

United States District Court
Northern District of California

This order terminates Dkt. No. 34.

IT IS SO ORDERED.

Dated: 12/26/2019

HAYWOOD S. GILLIAM, JR.
United States District Judge

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CARLOS A. ORTEGA, Plaintiff, v. A. FLORES, et al., Defendants.	Case No. 19-cv-00319-HSG **JUDGMENT**

The Court has GRANTED Defendants' motion for summary judgment. The Clerk shall enter judgment in favor of Defendants and against Plaintiff, and close the case.

IT IS SO ORDERED AND ADJUDGED.

Dated: 7/26/2023

Haywood S. Gilliam Jr.

HAYWOOD S. GILLIAM, JR.
United States District Judge

9th cir. Court OF Appeals N/O. 23-1831

Appendix-C

Judgement December 9, 2021

For Supreme Court OF The united states

Carlos A. Ortega
#210931-2 T-10
3100 Napa Vallejo-Hwy
Napa, CA. 94558

Dated
10/10/25

2021 WL 5855066
Only the Westlaw citation is currently available.
United States Court of Appeals, Ninth Circuit.

Carlos Armando ORTEGA, Plaintiff-Appellant,
v.
SANTA CLARA COUNTY JAIL; et al., Defendants,
and
A. Flores, Correctional Officer;
et al., Defendants-Appellees.

No. 19-17547
|
Argued and Submitted November
15, 2021 San Francisco, California
|
FILED December 9, 2021

Appeal from the United States District Court for the Northern District of California, Haywood S. Gilliam, Jr., District Judge, Presiding, D.C. No. 4:19-cv-00319-HSG

Attorneys and Law Firms

Margaret Adema Maloy, Associate, Jones Day, San Francisco, CA, for Plaintiff-Appellant.

Michael C. Serverian, Esquire, Office of the County Counsel, San Jose, CA, for Defendants-Appellees.

Before: PAEZ and FRIEDLAND, Circuit Judges, and KORMAN,* District Judge.

MEMORANDUM**

*1 Appellant Carlos Armando Ortega, who is in psychiatric detention, appeals the district court's dismissal without leave to amend of his 42 U.S.C. § 1983 complaint for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure. We have jurisdiction under 28 U.S.C. § 1291. We reverse and remand for further proceedings.

The district court determined that the statute of limitations for Ortega's complaint expired on December 12, 2014 and dismissed his complaint as "untimely." Plaintiffs are generally not required to "plead around affirmative defenses." *U.S. Commodity Futures Trading Comm'n v. Monex Credit Co.*, 931 F.3d 966, 972 (9th Cir. 2019). Rather, "[d]ismissal under Rule 12(b)(6) on the basis of an affirmative defense is proper only if the defendant shows some obvious bar to securing relief on the face of the complaint." *ASARCO, LLC v. Union Pac. R.R. Co.*, 765 F.3d 999, 1004 (9th Cir. 2014). Thus, "[a] motion to dismiss based on the running of the statute of limitations period may be granted only 'if the assertions of the complaint, read with the required liberality, would not permit the plaintiff to prove that the statute was tolled.' " *Supermail Cargo, Inc. v. United States*, 68 F.3d 1204, 1206–07 (9th Cir. 1995) (citing *Jablon v. Dean Witter & Co.*, 614 F.2d 677, 682 (9th Cir. 1980)). Under this standard, Ortega has not pleaded himself out of court by failing to plead around the statute of limitations.

Ortega may be able to establish entitlement to tolling. Under California law,[1] Ortega may be entitled to statutory tolling if he lacked "the legal capacity to make decisions" when his cause of action accrued, Cal. Civ. Proc. Code § 352(a), or to equitable tolling, if he demonstrates "excusable delay," *Johnson v. Henderson*, 314 F.3d 409, 414 (9th Cir. 2002).[2]

The district court found that Ortega was not entitled to statutory tolling because he did not "present[ ] evidence supporting his allegation" that he lacked the legal capacity to make decisions in any of his filings. The district court found that Ortega was not entitled to equitable tolling because he did not "demonstrate[ ] the necessary reasonable and good faith conduct required," as he was able to litigate other lawsuits during the time period at issue.[3] This is the incorrect Rule 12(b)(6) standard; Ortega need not "demonstrate" or "present evidence" at this stage. Rather, he must make factual allegations that show a plausible claim for relief, *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)), and do not foreclose the possibility that he may establish statutory or equitable tolling, *Supermail Cargo*, 68 F.3d at 1206–07. The face of his complaint does not foreclose the possibility that Ortega may be able to demonstrate that he lacked the legal capacity to make decisions during the relevant time period or that he excusably delayed filing his suit. Because the district court erred in dismissing Ortega's complaint, we reverse and remand for further proceedings.

*2 **REVERSED AND REMANDED.**

All Citations

Not Reported in Fed. Rptr., 2021 WL 5855066

Footnotes

* The Honorable Edward R. Korman, United States District Judge for the Eastern District of New York, sitting by designation.

** This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

1 Federal courts apply the forum state's tolling laws to 42 U.S.C. § 1983 cases. *Jones v. Blanas*, 393 F.3d 918, 927 (9th Cir. 2004).

2 California applies a stop-clock approach to equitable tolling: "the limitations period *stops running* during the tolling event, and begins to run again only when the tolling event has concluded." *Lantzy v. Centex Homes*, 73 P.3d 517, 523 (Cal. 2003), *as modified* (Aug. 27, 2003) (emphasis in original).

3 The district court properly took judicial notice of the list of Ortega's other cases. Fed. R. Evid. 201(b); *see Est. of Blue v. County of Los Angeles*, 120 F.3d 982, 984 (9th Cir. 1997) (taking judicial notice of court filings in a related case to affirm the district court's decision to dismiss the plaintiff's complaint as untimely and deny the plaintiff equitable tolling). Moreover, these materials, even if considered, do not prove that Ortega's complaint is untimely. While Ortega's litigation history might suggest that he had the capacity to litigate, there could be factual questions about whether Ortega was actually competent. For example, counsel or another prisoner could have helped him file lawsuits. And, even if Ortega was competent enough to file certain lawsuits on his own, it is possible that Ortega was only competent during brief windows of time—windows that add up to much less than two years.

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