

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 21, 2026

Christopher M. Wolpert
Clerk of Court

ROGER SCOTT BLACKBURN,

Plaintiff - Appellant,

v.

EXECUTIVE DIRECTOR OF
CDOC, Warden of Sterling
Correctional Facility; JOHN
CHAPDELAINE, Assistant Warden;
LT. SMITHGAL, Sterling Correct.
Med. et al.; WARDEN OF
STERLING CORRECTIONAL
FACILITY; STERLING
CORRECTIONAL FACILITY MED.
STAFF,

Defendants - Appellees.

No. 26-1105
(D.C. No. 1:24-CV-00865-CNS-
NRN)
(D. Colo.)

ORDER AND JUDGMENT*

Before **BACHARACH**, **McHUGH** and **CARSON**, Circuit Judges.

* The plaintiff requests oral argument, but it would not help us decide the appeal. So we have decided the appeal based on the record and the parties' briefs. *See* Fed. R. App. P. 34(a)(2)(C); 10th Cir. R. 34.1(G).

This order and judgment is not precedential except under the doctrines of law of the case, res judicata, and collateral estoppel. But the order and judgment may be cited for its persuasive value if otherwise appropriate. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

The central issue here involves timeliness of constitutional claims under 42 U.S.C. § 1983. The claims grew out of alleged indifference to a prisoner's safety and medical care in the days following a prison rape roughly eighteen years ago. The limitations period would ordinarily have expired years before the prisoner sued. But is timeliness affected by the alleged failure of prison officials to tell a prosecutor about the prison rape? We answer *no*.

1. The plaintiff sued sixteen years after the underlying events.

This appeal arose from a dismissal for failure to state a valid claim. Dismissal may be appropriate for timeliness when the relevant dates are apparent from the complaint. *Herrera v. City of Espanola*, 32 F.4th 980, 991 (10th Cir. 2022). In considering a dismissal based on timeliness, we credit the plaintiff's allegations in the complaint. *United States v. Rodriguez-Aguirre*, 264 F.3d 1195, 1203 (10th Cir. 2001).

Here the allegations state that the plaintiff was raped in prison eighteen years ago and left in the same cell block with the rapist. The plaintiff alleges that

- he threatened to sue and
- staff retaliated by confiscating his legal papers.

These allegations sparked this suit, and the plaintiff claims

- violation of the Eighth Amendment when prison officials disregarded his injuries and

- violation of the First Amendment through retaliation based on his threat to sue.

The district court dismissed the action as untimely, and the plaintiff appeals.

2. The limitations period had expired.

For timeliness, we identify the period of limitations and determine when this period began running. Section 1983 does not specify a period of limitations, so we use the forum state's statute of limitations for claims of personal injury. *Wilson v. Garcia*, 471 U.S. 261, 276 (1985). The forum state here, Colorado, has a residual two-year statute of limitations for claims of personal injury. *Blake v. Dickason*, 997 F.2d 749, 750 (10th Cir. 1993). So the plaintiff had two years to sue under § 1983. *Fogle v. Pierson*, 435 F.3d 1252, 1258 (10th Cir. 2006).

The resulting question is when the two-year period began. We answer this question by using federal law. *Wallace v. Kato*, 549 U.S. 384, 388 (2007); *Newcomb v. Ingle*, 827 F.2d 675, 678 (10th Cir. 1987). For constitutional claims, the period begins when the plaintiff knew or should have known that his rights had been violated. *Smith v. City of Enid By & Through Enid City Comm'n*, 149 F.3d 1151, 1154 (10th Cir. 1998).

The plaintiff knew the underlying facts eighteen years ago. For example, he knew

- that he had been raped,

- that staff had left him in the same cellblock with the rapist,
- that staff hadn't provided the desired treatment,
- that he had threatened to sue, and
- that officials had responded by confiscating his legal papers.

Because he knew what had happened, the two-year period of limitations would generally have expired sixteen years ago. But the plaintiff waited another fourteen years to sue. So we would ordinarily regard the action as untimely.

3. The plaintiff cannot avoid the statute of limitations.

To avoid the time-bar, the plaintiff argues that

- prison staff failed to submit the results of a rape investigation to the prosecutor and
- he discovered that lapse less than two years before suing.

According to the plaintiff, these facts show a cover-up, which would delay the start of the limitations period. But the plaintiff isn't suing for a failure to prosecute the rapist. Instead, the claims involve deliberate indifference toward the plaintiff and retaliation for his complaints. The plaintiff could have brought these claims regardless of whether prison staff had pursued a

criminal prosecution against the alleged rapist.¹ So the plaintiff's arguments wouldn't have triggered additional time to sue.

4. The dismissal didn't violate the Constitution.

The plaintiff argues that the dismissal violates his rights to petition for redress of grievances (First Amendment), to have due process (Fifth Amendment), and to obtain a jury trial (Seventh Amendment). But these rights aren't affected when a complaint is dismissed for failure to state a valid claim. *See Castellano v. City of New York*, 142 F.3d 58, 74 (2d Cir. 1998) (stating that dismissal for failure to state a valid claim does not violate the rights to due process or to petition for redress of grievances); *Smith v. Kitchen*, 156 F.3d 1025, 1029 (10th Cir. 1997) (stating that the Seventh Amendment isn't violated by dismissal when the complaint doesn't include factual allegations that would overcome a complete defense). So we reject the plaintiff's constitutional arguments.

* * *

The complaint specifies that all of the underlying events took place many years before the suit began: a rape in prison, disregard for the plaintiff's safety and medical care, and confiscation of his legal papers to retaliate for a threat to sue. These alleged events allowed the plaintiff to

¹ The plaintiff refers to the alleged cover-up as a "distinct, separate constitutional injury." Appellant's Reply Br. at 7. But the complaint doesn't include a claim involving a cover-up.

sue regardless of whether prison staff had pursued a criminal prosecution of the alleged rapist. The dismissal thus didn't violate the First, Fifth, or Seventh Amendment.

Affirmed.

Entered for the Court

Robert E. Bacharach
Circuit Judge