

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

ROBERT A. STEARNS,

Plaintiff,

vs.

CIVIL ACTION  
No. 10-3171-SAC

WYANDOTTE COUNTY UNIFIED  
GOVERNMENT, et al.,

Defendants.

MEMORANDUM AND ORDER

This matter is a civil rights action filed pursuant to 42 U.S.C. § 1983 by a prisoner at the Lansing Correctional Facility, Lansing, Kansas. Plaintiff proceeds pro se and submitted the filing fee.

By an order entered on October 26, 2010, the court directed plaintiff to show cause why this matter should not be dismissed due to his failure to present his claims within the two year statute of limitations. Plaintiff filed a timely response.

In that response, plaintiff declines to address his failure to present the claims within the limitations period, arguing that it is improper to require him to address that point before service of process.

It is settled, however, that:

A district court may not sua sponte dismiss a prisoner's § 1983 action on the basis of the statute of limitations unless it is clear from the face of the complaint that there are no meritorious tolling issues, or the court has provided the plaintiff notice and an opportunity to be heard on the issue. *Vasquez Arroyo v. Starks*, 589 F.3d 1091, 1097 (10<sup>th</sup> Cir. 2009).

Thus, the court properly may direct the plaintiff to respond to this issue. In order to assure that plaintiff has been afforded the opportunity to address the apparent failure to file within the limitation period, the court will extend the period in which he may show cause.

IT IS, THEREFORE, BY THE COURT ORDERED plaintiff is granted to and including December 22, 2010, to show cause why this matter should not be dismissed as untimely. The failure to file a timely response may result in the dismissal of this matter without additional prior notice to the plaintiff.

A copy of this order shall be transmitted to the plaintiff.

**IT IS SO ORDERED.**

Dated at Topeka, Kansas, this 30<sup>th</sup> day of November, 2010.

S/ Sam A. Crow  
SAM A. CROW  
United States Senior District Judge