

357 Fed.Appx. 990, 2009 WL 5103591 (C.A.10 (Kan.))
 (Not Selected for publication in the Federal Reporter)
 (Cite as: 357 Fed.Appx. 990, 2009 WL 5103591 (C.A.10 (Kan.)))

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This case was not selected for publication in the Federal Reporter.

Not for Publication in West's Federal Reporter. See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Tenth Circuit Rule 32.1. (Find CTA10 Rule 32.1)

United States Court of Appeals,
 Tenth Circuit.
 Harold E. HAWKINS, Jr., Plaintiff-Appellant,
 v.

Carl LEMONS, Police Officer, individually and as an employee for the State of Kansas; Fongvilay Phommachanh, Police Officer, individually and as an employee of the State of Kansas; Jane and John Does; Denny's Co., Inc., Food Corporation of America, Defendants-Appellees.

No. 09-3294.
 Dec. 29, 2009.

Background: Arrestee proceeding pro se filed civil rights action alleging that two police officers in Kansas attacked and shot him because he was African-American man. The United States District Court for the District of Kansas, Sam A. Crow, Senior Judge, 2009 WL 2475130, dismissed action. Arrestee appealed.

Holdings: The Court of Appeals, Michael R. Murphy, Circuit Judge, held that:

- (1) equitable tolling of limitations period was not warranted and
- (2) newly asserted claims of inadequate medical care against county jail and warden at correctional facility had to be brought in separate action.

Affirmed.

West Headnotes

[1] Limitation of Actions 241 ⚔ 104.5**241 Limitation of Actions****241II Computation of Period of Limitation****241II(G) Pendency of Legal Proceedings, Injunction, Stay, or War****241k104.5 k. Suspension or stay in general; equitable tolling. Most Cited Cases**

Equitable tolling of limitations period in civil rights action alleging that two police officers in Kansas attacked and shot him because he was African-American man was not warranted where neither arrestee's incomplete understanding of legal issues, nor pendency of state criminal prosecution, nor arrestee's medical condition prevented him from filing his pro se complaint. 42 U.S.C.A. §§ 1983, 1985; West's K.S.A. 60-515(a).

[2] Federal Civil Procedure 170A ⚔ 258**170A Federal Civil Procedure****170AII Parties****170AII(F) Permissive Joinder****170AII(F)2 Particular Parties Who May Be Joined****170Ak258 k. Governmental bodies and officers thereof. Most Cited Cases**

Newly asserted claims of inadequate medical care against county jail and warden at correctional facility did not have questions of law or fact in common with civil rights claims originally filed alleging that two police officers in Kansas attacked and shot him because he was African-American man, and thus had to be brought in separate action. 42 U.S.C.A. § 1983; Fed.Rules Civ.Proc.Rule 20(a)(2), 28 U.S.C.A.

***990** Harold E. Hawkins, Jr., Hutchinson, KS, pro se.

Before LUCERO, McKAY, and MURPHY, Circuit Judges.

***991 ORDER AND JUDGMENT^{FN*}**

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FN* This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R.App. P. 32.1 and 10th Cir. R. 32.1.

MICHAEL R. MURPHY, Circuit Judge.

**1 After examining appellant's brief and the appellate record, this court has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R.App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

[1] Proceeding *pro se* and *in forma pauperis*, Harold E. Hawkins, Jr., appeals the dismissal of the civil rights complaint he brought pursuant to 42 U.S.C. § § 1983 and 1985. In the complaint, originally filed on June 4, 2009, Hawkins alleged two Wichita police officers attacked and shot him because he is an African-American man. He also alleged the same two officers conspired to commit fraud and testified falsely at his criminal trial. The district court concluded the claims relating to the shooting were barred by the applicable two-year statute of limitations.^{FN1} See *Brown v. Unified Sch. Dist. 501, Topeka Pub. Schs.*, 465 F.3d 1184, 1188 (10th Cir.2006). It further concluded the claim for the alleged false testimony was premature under *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994). The court gave Hawkins thirty days to amend his complaint to cure any deficiencies and assert any facts to support tolling the limitations period. See Kan. Stat. Ann. § 60-515(a) (providing the two-year statute of limitations may be tolled for an inmate who is "imprisoned for a term less than such person's natural life" if the inmate was denied "access to the court for purposes of bringing an action").

FN1. The district court also concluded Hawkins's complaint did not allege actionable constitutional claims against "John & Jane Does" and "Denny's Co., Inc., Food corporation of America." Hawkins volun-

tarily relinquished these claims in his amended complaint and they are not implicated in this appeal.

[2] Hawkins filed an amended complaint on September 2, 2009, addressing the statute of limitations issue and also attempting to raise new claims of inadequate medical care against the Sedgwick County Jail and the Warden at the Hutchinson Correctional Facility. The district court concluded Hawkins was not entitled to equitable tolling. The court reasoned he knew his constitutional rights were allegedly violated on March 12, 2006, when he was shot. Neither Hawkins's incomplete understanding of the legal issues, nor the pendency of the state criminal prosecution, nor Hawkins's medical condition prevented him from filing his civil rights complaint. The court refused to consider the newly asserted claims of inadequate medical care, concluding they had no questions of law or fact in common with the claims originally filed and, thus, must be brought in a separate action. See Fed.R.Civ.P. 20(a)(2).

We have reviewed the record, Hawkins's brief, and the applicable law. Finding no reversible error, we **affirm** the district court's dismissal of Hawkins's complaint for substantially the reasons stated in the district court's orders dated August 12, 2009, 2009 WL 2475130, and September 30, 2009. We remind Hawkins of his obligation to continue making partial payments until his appellate filing fee is paid in full. See 28 U.S.C. § 1915(b).

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