

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

THOMAS M. GUERRA,

Plaintiff,

v.

CASE NO. 18-3078-SAC

TERRY HARROLDSON, et al.,

Defendants.

MEMORANDUM AND ORDER

Plaintiff brings this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. Although Plaintiff is currently incarcerated at the El Dorado Correctional Facility in El Dorado, Kansas, the events giving rise to his Complaint appear to have taken place during his detention at the Sumner County Jail in Wellington, Kansas. On April 17, 2018, the Court entered a Memorandum and Order and Order to Show Cause (“MOSC”) (Doc. 4) giving Plaintiff until May 17, 2018, in which to show cause why Plaintiff’s Complaint (Doc. 1) should not be dismissed for the reasons set forth in the MOSC. Plaintiff has failed to file a response to the MOSC within the allowed time.

In the MOSC, the Court found that it plainly appears from the face of the Complaint that Plaintiff’s claims are subject to dismissal as barred by the applicable two-year statute of limitations. Plaintiff filed his Complaint on March 30, 2018. Plaintiff’s alleged racial discrimination occurred on November 18, 2010, and his alleged assault and battery occurred on August 17, 2010. It thus appears that any events or acts of Defendants taken in connection with Plaintiff’s claims took place more than two years prior to the filing of Plaintiff’s Complaint and are time-barred. *See Fratus v. Deland*, 49 F.3d 673, 674-75 (10th Cir. 1995) (district court may consider affirmative defenses *sua sponte* when the defense is obvious from the face of the

complaint and no further factual record is required to be developed). Plaintiff has not alleged facts suggesting that he would be entitled to statutory or equitable tolling.

IT IS THEREFORE ORDERED BY THE COURT that this action is **dismissed** for failure to state a claim.

IT IS SO ORDERED.

Dated in Topeka, Kansas, on this 22nd day of May, 2018.

s/ Sam A. Crow
SAM A. CROW
Senior U. S. District Judge