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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ERNEST LEE COX, JR.,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p style="text-align: center;">v.</p> <p>GREGORY HARRIS; et al.,</p> <p style="text-align: center;">Defendants - Appellees.</p>

No. 08-16252

D.C. No. 5:03-cv-03961-JW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
James Ware, District Judge, Presiding

Submitted January 11, 2010**

Before: BEEZER, TROTT, and BYBEE, Circuit Judges.

Ernest Lee Cox, Jr., a California state prisoner, appeals pro se from the district court's judgment dismissing as untimely his 42 U.S.C. § 1983 action

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

alleging deliberate indifference to his safety. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Canatella v. Van De Kamp*, 486 F.3d 1128, 1132 (9th Cir. 2007). We affirm.

The district court properly dismissed the action as time-barred because Cox filed suit after the applicable statute of limitations and statutory tolling period had expired. *See id.* at 1132-33 (explaining that a one-year statute of limitations applies to any cause of action that was more than one-year old as of January 1, 2003). Moreover, Cox was not eligible for equitable tolling under California's tolling provisions. *See Cervantes v. City of San Diego*, 5 F.3d 1273, 1275 (9th Cir. 1993) (setting forth applicable tolling criteria).

Cox's remaining contentions are unpersuasive.

AFFIRMED.