

DEC 27 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN MICHAUD,

Plaintiff - Appellant,

v.

ROBERT BANNISTER; et al.,

Defendants - Appellees.

No. 09-17229

D.C. No. 2:08-cv-01371-RCJ-PAL

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Robert C. Jones, District Judge, Presiding

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and W. FLETCHER, Circuit Judges.

John Michaud, a Nevada state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging deliberate indifference to medical needs in connection with his cataracts. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Cholla Ready Mix, Inc.*

* 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).

v. Civish, 382 F.3d 969, 973 (9th Cir. 2004), and we affirm in part, reverse in part, and remand.

The district court properly dismissed as time-barred Michaud's claims regarding his requests for surgery in 2003 and 2005. *See Perez v. Seevers*, 869 F.2d 425, 426 (9th Cir. 1989) (per curiam) (applying Nevada's two-year statute of limitations for personal injury claims to a § 1983 claim).

However, Michaud's claims regarding access to medical care in 2007 and 2008 are not time-barred solely because he had already been denied surgery in previous years. *See TwoRivers v. Lewis*, 174 F.3d 987, 991-92 (9th Cir. 1999) (a deliberate indifference claim accrues when the prisoner "knew or had reason to know of the [prison] employees' deliberate indifference to his medical needs").

Michaud concedes on appeal that his claims for injunctive relief are moot. Accordingly, we reverse and remand for further proceedings solely on Michaud's claims for damages regarding access to medical care in 2007 and 2008.

Defendants shall bear Michaud's costs on appeal.

AFFIRMED in part, REVERSED in part, and REMANDED.