

APR 24 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT J. LUMPKIN,

Plaintiff - Appellant,

v.

SERGEANT ARMSTRONG, City of Kent
Correctional Facility Sergeant,

Defendant - Appellee.

No. 11-35044

D.C. No. 2:09-cv-01014-RAJ

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Richard A. Jones, District Judge, Presiding

Submitted April 17, 2012**

Before: LEAVY, PAEZ, and BEA, Circuit Judges.

Former Washington state prisoner Robert J. Lumpkin appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging that

* 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).

he was unlawfully incarcerated between June 12, 2009 and July 8, 2009. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo, *Cafasso v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1060 (9th Cir. 2011), and we affirm.

The district court properly granted summary judgment because Lumpkin failed to raise a genuine dispute of material fact as to whether he was unlawfully incarcerated between June 12, 2009 and July 8, 2009. *See id.* at 1061 (“[t]o survive summary judgment, a plaintiff must set forth non-speculative evidence of specific facts”).

We do not consider issues and claims raised for the first time on appeal. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999).

AFFIRMED.