

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 12 2021

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

KENTRELL WILLIS,

No. 20-15127

Plaintiff-Appellant,

D.C. No. 1:19-cv-00761-LJO-BAM

v.

MEMORANDUM*

UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O'Neill, District Judge, Presiding

Submitted May 11, 2021**

Before: FERNANDEZ, SILVERMAN, and N.R. SMITH, Circuit Judges

Federal prisoner Kentrell Willis appeals pro se from the district court's judgment dismissing his action under the Federal Tort Claims Act ("FTCA") as barred by the statute of limitations. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Gregg v. Haw. Dep't of Pub. Safety*, 870 F.3d 883, 886 (9th

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

Cir. 2017) (dismissal as time-barred); *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) (dismissal under 28 U.S.C. § 1915(e)(2)(B)(ii)); *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000) (dismissal under 28 U.S.C. § 1915A). We vacate and remand.

The district court determined that Willis's claims were time-barred and that Willis was not entitled to equitable tolling. However, Willis alleged that prison officials withheld his legal materials necessary to file a well-pleaded complaint. It is not evident at this early stage in the proceedings that equitable tolling would not apply to extend the limitations proceeding. *See* 28 U.S.C § 2401(b); *Wong v. Beebe*, 732 F.3d 1030, 1052 (9th Cir. 2013) (explaining elements necessary for equitable tolling); *Cervantes v. City of San Diego*, 5 F.3d 1273, 1276-77 (9th Cir. 1993) (noting dismissal on the basis of the statute of limitations is disfavored where the complaint, liberally construed, adequately alleges facts showing the potential applicability of tolling). Because the action was dismissed at screening, and the grounds for equitable tolling are highly fact-dependent, we vacate and remand for the district court to order service of the complaint on defendant.

VACATED and REMANDED.