

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 21 2023

FOR THE NINTH CIRCUIT

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

MICHAEL CARMINE MICOLO,

No. 20-16481

Plaintiff-Appellant,

D.C. No.

v.

2:17-cv-01439-DJH-JZB

D. REYES, Deputy Sheriff #1150; STACY
SHERWOOD, Pinal County Deputy,

MEMORANDUM*

Defendants-Appellees,

and

COUNTY OF PINAL; et al.,

Defendants.

Appeal from the United States District Court
for the District of Arizona

Diane J. Humetewa, District Judge, Presiding

Submitted April 17, 2023**

Before: CLIFTON, R. NELSON, and BRESS, Circuit Judges.

Michael Carmine Micolo appeals pro se from the district court's judgment

* 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).

dismissing his 42 U.S.C. § 1983 action alleging excessive force and related state law claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal on the basis of the applicable statute of limitations and under Federal Rule of Civil Procedure 12(b)(6). *Cholla Ready Mix, Inc. v. Civish*, 382 F.3d 969, 973 (9th Cir. 2004). We affirm.

The district court properly dismissed Micolo's excessive force claim as time-barred because Micolo failed to file his action within the applicable statute of limitations. *See Jones v. Blanas*, 393 F.3d 918, 927 (9th Cir. 2004) (§ 1983 claims are governed by the forum state's statute of limitations for personal injury claims); Ariz. Rev. Stat. § 12-542 (providing two-year statute of limitations for personal injury actions).

The district court properly dismissed Micolo's state law claims because Micolo failed to comply with Arizona's Notice of Claim rules. *See* Ariz. Rev. Stat. § 12-821.01 (requiring plaintiffs to serve notice of claims against a public entity within 180 days of accrual of cause of action).

We do not consider matters not specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.