

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 9/12/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

JOHN P. BAKER,) No. 1 CA-CV 11-0389
)
Plaintiff/Appellant,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
DEPUTY WARDEN BRADLEY; CO IV) Rule 28, Arizona Rules of
BASURTO; and ANNE REEDER,) Civil Appellate Procedure)
)
Defendants/Appellees.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CV2010-029521

The Honorable Edward O. Burke, Judge (Retired)

AFFIRMED

John P. Baker
Appellant *In Propria Persona*

Buckeye

Thomas C. Horne, Arizona Attorney General
By Paul E. Carter, Assistant Attorney General
Attorneys for Defendants/Appellees

Tucson

D O W N I E, Judge

¶1 John P. Baker appeals the dismissal of his complaint against Arizona Department of Corrections ("ADOC") Deputy Warden Bradley, CO IV Basurto, and former Deputy Warden Anne Reeder. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

¶12 In June 2008, Baker, a prison inmate, was threatened by other inmates. He requested protective segregation, and officials placed him in a detention unit. Baker was later transferred to a "super-maximum custody unit." Baker filed a grievance regarding his transfer and concomitant loss of privileges. Bradley, Basurto, and Reeder, among others, were involved with his grievances and appeals.

¶13 Before completing the grievance process, Baker filed a "civil rights" action ("Baker I") against the ADOC Director, Bradley, and Basurto ("Baker I Defendants"). The Baker I Defendants moved to dismiss pursuant to Rule 12(b), Arizona Rules of Civil Procedure ("Rule"), and based on Baker's failure to exhaust administrative remedies before filing suit. The Pima County Superior Court granted the motion, dismissing Baker's complaint with prejudice. Baker appealed.

¶14 On September 30, 2009, Division Two of this Court affirmed the dismissal with prejudice of Baker's state law claims but held that any federal claims alleged in Baker I should have been dismissed without prejudice. The mandate in Baker I issued on March 5, 2010.

¶15 In October 2010, Baker filed a new complaint challenging his 2008 transfer and asserting a violation of his federal constitutional rights. Basurto and Bradley waived

service. Baker attempted to serve Reeder by mail but was informed she no longer worked for ADOC. Baker then filed a Motion for Deferral for Service by Publication, which the superior court granted. Reeder, though, was never served.

¶16 Basurto and Bradley moved to dismiss the complaint, alleging it was not timely filed under the savings statute and that it failed to state a claim upon which relief could be granted. The trial court granted the motion on several grounds, including the untimeliness of the complaint under the savings statute. Baker appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(A)(1).

DISCUSSION

¶17 Arizona's savings statute, A.R.S. § 12-504, provides, in relevant part:

- A. If an action is commenced within the time limited for the action, and the action is *terminated in any manner other than* by abatement, voluntary dismissal, dismissal for lack of prosecution or a final judgment on the merits, the plaintiff, or a successor or personal representative, may commence a new action for the same cause after the expiration of the time so limited and *within six months after such termination. . . .*
- B. The provisions of subsection A apply to judgments on appeal. The date of issuance of the mandate by the appellate court constitutes the date of termination of the action for the purposes of computing the time limited for commencement of the new action.

(Emphasis added.)

¶18 Re-filing under § 12-504(A) "must be accomplished *within a maximum of six months*" after the preceding action terminates. *Roller Vill., Inc. v. Superior Court (Dow)*, 154 Ariz. 195, 197, 741 P.2d 328, 330 (App. 1987) (emphasis added). "[I]f there is an appeal, termination does not occur until the appellate court issues its mandate." *Id.*

¶19 The mandate in Baker I issued on March 5, 2010. Baker therefore had until September 6, 2010, to file his new complaint. See Ariz. R. Civ. P. 6(a) (when calculating prescribed time periods within which a party must act, the first day is excluded). Baker, though, did not verify his complaint until October 4, 2010, and it was filed on October 20, 2010.¹

¶10 Baker claims he was unaware of the savings statute, had no "access to it," and that the statute "should be overlooked in this important case." However, litigants representing themselves *in propria persona* are entitled to no more

¹ The motion to dismiss stated that Baker mailed his complaint on October 4, 2010. Baker did not dispute that date, but instead summarily claimed his complaint was timely under the prison mail rule. We disagree. The prison mail rule allows a legal document filed by a *pro se* inmate to be deemed filed when the inmate properly addresses and delivers it to prison authorities to mail. *Cf. Mayer v. State*, 184 Ariz. 242, 244, 908 P.2d 56, 58 (App. 1995). Even assuming Baker gave the complaint to prison authorities on the day that he verified it, that date was outside the six-month period dictated by the savings statute.

consideration than if represented by counsel, and they are held to the same level of knowledge regarding required procedures and applicable laws as lawyers. See *Smith v. Raab*, 95 Ariz. 49, 53, 386 P.2d 649, 652 (1963) (citations omitted); *Ackerman v. S. Ariz. Bank & Trust Co.*, 39 Ariz. 484, 486-87, 7 P.2d 944, 944-45 (1932). We are not faced here with an inartfully worded pleading, but with a failure to comply with a specific statutory deadline. Baker's ignorance of the savings statute and its requirements cannot excuse his failure to file a timely complaint.

CONCLUSION

¶11 Baker's complaint was properly dismissed as untimely. Based on this determination, we need not address the additional grounds for dismissal found by the superior court. We affirm the judgment of dismissal.

/s/

MARGARET H. DOWNIE, Judge

CONCURRING:

/s/

LAWRENCE F. WINTHROP, Presiding Judge

/s/

JON W. THOMPSON, Judge