

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-7162

DAVID V. WOLFE,

Plaintiff - Appellant,

v.

ROANOKE CITY JAIL; CARILION HOSPITAL STAFF; THOMAS BOLTON,
Dr.; UNITED STATES MARSHAL SERVICE,

Defendants - Appellees.

Appeal from the United States District Court for the Western
District of Virginia, at Roanoke. Samuel G. Wilson, District
Judge. (7:09-cv-00220-sgw-mfu)

Submitted: October 30, 2009

Decided: December 14, 2009

Before WILKINSON, NIEMEYER, and SHEDD, Circuit Judges.

Affirmed by unpublished per curiam opinion.

David V. Wolfe, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

David V. Wolfe, a federal inmate formerly housed in a local Virginia jail, appeals the district court's order dismissing his civil action, filed pursuant to 42 U.S.C. § 1983 (2006) and the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 2671 to 2680 (2006), as untimely. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court.* See Wolfe v. Roanoke City Jail, No. 7:09-cv-00220-sgw-mfu (W.D. Va. June 11, 2009). We dispense with oral argument because the facts and legal

* To the extent Wolfe argues he is entitled to tolling of the limitations period for his § 1983 claim, even with the benefit of such tolling his complaint would remain untimely. At most, Wolfe is entitled to tolling for thirty-five days, the time during which his previously filed complaint asserting the same claim was pending with the district court. See Va. Code Ann. § 8.01-229(E)(1) (2007) (explaining that, if an action is initiated within the limitations period, "and for any cause abates or is dismissed without determining the merits, the time such action is pending shall not be computed as part of the period within which such action may be brought, and another action may be brought within the remaining period"); Wolfe v. Roanoke City Jail, No. 7:07-cv-00362-sgw-mfu (W.D. Va. July 26, 2007) (filed July 26, 2007, and dismissed without prejudice on August 30, 2007, pursuant to Wolfe's motion for voluntary dismissal). As the underlying complaint was filed more than four months beyond the limitations period, tolling for thirty-five days would not render the complaint timely. As well, Wolfe's claims that the limitations period should have re-started after his initial complaint was dismissed and that he was entitled to tolling during the pendency of his administrative remedies are both foreclosed by Virginia law. See Va. Code Ann. § 8.01-229 (2007).

contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED