

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 7 2022

FOR THE NINTH CIRCUIT

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

LYLE FLOYD, a single person,

No. 21-35917

Plaintiff-Appellant,

D.C. No. 2:21-cv-00211-SAB

v.

MEMORANDUM*

CITY OF GRAND COULEE; J.D. TUFTS,
Grand Coulee Police Chief; GARY W.
MOORE, Sergeant; JOSEPH HIGGS,
Officer; ADAM FLORENZEN, Officer;
JOHN AND JANE DOES 1-10,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Washington
Stanley A. Bastian, Chief District Judge, Presiding

Submitted December 5, 2022**
Seattle, Washington

Before: McKEOWN, MILLER, and H.A. THOMAS, Circuit Judges.

Plaintiff Lyle Floyd appeals the district court's order granting the motion to dismiss filed by Defendants City of Grand Coulee, Police Chief J.D. Tufts,

* 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).

Sergeant Gary W. Moore, Officer Joseph Higgs, and Officer Adam Florenzen. We have jurisdiction under 28 U.S.C. § 1291. We affirm.

1. The district court correctly concluded that Floyd’s claims under 42 U.S.C. § 1983 and *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978), are time barred. A three-year statute of limitations applies to these claims. *See* Wash. Rev. Code Ann. § 4.16.080(2); *cf. Butler v. Nat’l Cmty. Renaissance of Cal.*, 766 F.3d 1191, 1198 (9th Cir. 2014) (explaining that in § 1983 actions, federal courts apply “the forum state’s statute of limitations for personal injury actions [and its] law regarding tolling, including equitable tolling”). In Floyd’s case, that statute of limitations ran in 2019, three years after his alleged injuries occurred, but Floyd did not file his complaint until 2021. *See Wallace v. Kato*, 549 U.S. 384, 397 (2007) (“[T]he statute of limitations upon a § 1983 claim . . . for a false arrest in violation of the Fourth Amendment . . . begins to run at the time the claimant becomes detained pursuant to legal process.”).

2. Floyd seeks equitable tolling, but such tolling is not available to him as he cannot demonstrate that “an extraordinary circumstance prevented a timely filing” of his complaint. *In re Fowler*, 479 P.3d 1164, 1168 (Wash. 2021). Although deception that prevents a plaintiff from asserting a claim can constitute an extraordinary circumstance, *see Millay v. Cam*, 955 P.2d 791, 797 (Wash. 1998), Floyd concedes that he was aware of his alleged injuries in 2016. The

emails Floyd discovered in November 2018 thus had no bearing upon his ability to pursue his claims.

3. The district court also correctly concluded that Floyd's Washington state law claims for excessive force, assault and battery, and unlawful imprisonment are time barred. The two-year statute of limitations applicable to those claims ran in 2018, Wash. Rev. Code Ann. § 4.16.100(1), but Floyd did not file his complaint until 2021. *See Allen v. State*, 826 P.2d 200, 203 (Wash. 1992) ("The action accrues when the plaintiff knows or should know the relevant facts."). Tolling the statute of limitations to November 2018 would not make Floyd's filing timely. Even with such tolling, the statute of limitations would have run in November 2020, eight months before he filed his complaint.

AFFIRMED.