

APR 24 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT J. LUMPKIN,

Plaintiff - Appellant,

v.

SERGEANT ARMSTRONG, City of Kent
Correctional Facility Sergeant,

Defendant - Appellee.

No. 11-35044

D.C. No. 2:09-cv-01014-RAJ

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Richard A. Jones, District Judge, Presiding

Submitted April 17, 2012**

Before: LEAVY, PAEZ, and BEA, Circuit Judges.

Former Washington state prisoner Robert J. Lumpkin appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging that

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

he was unlawfully incarcerated between June 12, 2009 and July 8, 2009. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo, *Cafasso v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1060 (9th Cir. 2011), and we affirm.

The district court properly granted summary judgment because Lumpkin failed to raise a genuine dispute of material fact as to whether he was unlawfully incarcerated between June 12, 2009 and July 8, 2009. *See id.* at 1061 (“[t]o survive summary judgment, a plaintiff must set forth non-speculative evidence of specific facts”).

We do not consider issues and claims raised for the first time on appeal. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999).

AFFIRMED.