

MAR 10 2008

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANCOIS P. GIVENS,

Plaintiff - Appellant,

v.

CITY & COUNTY OF SAN
FRANCISCO; et al.,

Defendants - Appellees.

No. 06-16267

D.C. No. CV-06-02505-MJJ

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Martin J. Jenkins, District Judge, Presiding

Submitted July 31, 2007**

Before: SKOPIL, FERGUSON, and LEAVY, Circuit Judges.

Francois Givens, a California state prisoner, appeals pro se the district court's dismissal of his 42 U.S.C. § 1983 action on statute of limitations grounds. Because the district court dismissed the complaint on initial screening, pursuant to 28 U.S.C. § 1915A, without leave to amend, Givens had no opportunity to argue

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

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

that the statute of limitations should have been equitably tolled. *See Cervantes v. City of San Diego*, 5 F.3d 1273, 1276-77 (9th Cir. 1993) (noting dismissal on statute of limitations grounds is disfavored where matters outside the complaint are not considered and where equitable tolling may apply). We vacate and remand for the district court to determine in the first instance whether equitable tolling applies to the circumstance of this case.

VACATED and REMANDED.