

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
ILLINOIS, EASTERN DIVISION

Diontay Kimberly v. Nicholas Mukite, Andrew David, Timothy
Giorzkowski, David Magana, and Lee Caldwell

Kimberly · No. 24 C 11103 · Decided November 26, 2025

SUMMARY

The United States District Court for the Northern District of Illinois dismissed Diontay Kimberly’s claims against several police officers arising from an alleged unlawful seizure and use of excessive force. The court held that the 42 U.S.C. § 1983 claims accrued on September 15, 2021 and were barred by Illinois’s two-year statute of limitations, while the related Illinois constitutional claim was barred by the applicable one-year limitations period. The court dismissed the complaint with prejudice, denied the pending motion for default judgment as moot, and terminated the case.

CASE DETAILS

COURT	United States District Court for the Northern District of Illinois, Eastern Division
WRITING FOR THE COURT	Robert W. Gettleman
JURISDICTION	United States District Court for the Northern District of Illinois, Eastern Division
DECIDED	November 26, 2025
DOCKET	24 C 11103
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendants moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss claims under 42 U.S.C. § 1983 and the Illinois Constitution as untimely. The court granted the motion and dismissed the complaint with prejudice; plaintiff's pending motion for default judgment was denied as moot.
STANDARD OF REVIEW	The court reviewed the sufficiency of the complaint under Federal Rule of Civil Procedure 12(b)(6), accepting well-pleaded factual allegations as true and determining whether the complaint provided fair notice and stated a facially plausible claim. Dismissal at the pleading stage on statute-of-limitations grounds was proper because the complaint itself pleaded facts establishing tardiness.

PRECEDENTIAL VALUE	unpublished
PARTIES	Diontay Kimberly v. Nicholas Mukite, Andrew David, Timothy Giorzkowski, David Magana, Lee Caldwell

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QUESTIONS PRESENTED

1. Whether the complaint established on its face that Kimberly's § 1983 claims for unlawful seizure and excessive force were barred by the two-year Illinois personal-injury limitations period.
2. Whether Kimberly's alleged acquittal on May 10, 2023, delayed accrual or tolled the limitations period for his unlawful-seizure and excessive-force claims.
3. Whether the related Illinois Constitution claims were barred by Illinois's one-year limitations period for claims against local governments and governmental employees.
4. Whether dismissal should be with prejudice because the pleading defects could not be cured by amendment.
5. Whether plaintiff's motion for default judgment should be denied as moot after dismissal of the action.

HOLDINGS

1. A § 1983 claim alleging an unconstitutional search or seizure, including excessive force during an arrest, accrues when the alleged seizure or force occurs. In Illinois, the applicable limitations period is two years, so Kimberly's claims accrued on September 15, 2021 and were untimely when he filed in October 2024.
2. Subsequent criminal proceedings, acquittal, or incarceration do not ordinarily toll or postpone accrual of unlawful-search, unlawful-seizure, or excessive-force claims. Kimberly's alleged May 10, 2023 acquittal therefore did not make his October 2024 § 1983 filing timely.
3. The related Illinois Constitution claims were subject to Illinois's one-year limitations period for claims against local governments and governmental employees and were untimely even if the limitations period were measured from Kimberly's alleged acquittal.
4. Dismissal with prejudice was appropriate because the limitations defects could not be cured by repleading, and amendment would therefore be futile.

KEY QUOTATIONS

“Under federal law, “a claim asserting that a search or seizure violated the fourth amendment—and excessive force during an arrest is such a claim—accrues immediately.”” (5)

“Because plaintiff filed his complaint more than two years after the alleged unlawful seizure and excessive force occurred, his section 1983 claim is untimely.” (6)

“For the above reasons, the court grants defendants’ motion to dismiss for failure to state a claim [13]. Plaintiff’s complaint is dismissed with prejudice.” (7)

FACTUAL BACKGROUND

Kimberly alleged that on September 15, 2021, while he was sitting in a legally parked car in a police parking lot, officers blocked his vehicle, pointed firearms at him, ordered him to exit, and broke the car window when he did not immediately comply. He alleged that the broken window caused lacerations to his arms, neck, and legs. He asserted Fourth and Fourteenth Amendment claims under § 1983 and related claims under the Illinois Constitution, but did not sign his complaint until October 17, 2024.

PROCEDURAL HISTORY

Kimberly filed a complaint alleging that police officers unlawfully seized him and used excessive force on September 15, 2021. The court screened the complaint under 28 U.S.C. § 1915A, dismissed the City of Chicago, and allowed claims against the individual defendants to proceed. Defendants then moved to dismiss, arguing that the claims were barred by the applicable statutes of limitations. The court granted the motion, dismissed the action with prejudice, and terminated the case.

DISPOSITION

dismissed

CASES CITED

- Alam v. Miller Brewing Co., 709 F.3d 662, 665-66 (7th Cir. 2013)
- Gibson v. City of Chicago, 910 F.2d 1510, 1520 (7th Cir. 1990)
- Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)
- Edwards v. Snyder, 478 F.3d 827, 830 (7th Cir. 2007)
- Tregenza v. Great American Communications Co., 12 F.3d 717, 718 (7th Cir. 1993)
- Cancer Foundation, Inc. v. Cerberus Capital Management, LP, 559 F.3d 671, 674-75 (7th Cir. 2009)
- Livadas v. Bradshaw, 512 U.S. 107, 132 (1994)
- Graham v. Connor, 490 U.S. 386, 393-94 (1989)
- Jones v. Stehlin, No. 22-CV-50300, 2024 WL 4664489, at *3 (N.D. Ill. Nov. 4, 2024)
- Neita v. City of Chicago, 830 F.3d 494, 496, 498 (7th Cir. 2016)
- Prince v. Garcia, No. 22-CV-05703, 2024 WL 4368130, at *3, *7 (N.D. Ill. Sept. 30, 2024)
- Wallace v. Kato, 549 U.S. 384, 388 (2007)
- Evans v. Poskon, 603 F.3d 362, 363 (7th Cir. 2010)
- DeLarosa v. Village of Romeoville, No. 23 CV 7049, 2024 WL 1579394, at *3 (N.D. Ill. Apr. 11, 2024)

- DeLarosa v. Village of Romeoville, No. 24-1715, 2024 WL 4523808, at *2 (7th Cir. Oct. 18, 2024)
- Williams v. Lampe, 399 F.3d 867, 870 (7th Cir. 2005)
- Jimenez v. Herrera, No. 95 C 1956, 1996 WL 99715, at *4 (N.D. Ill. Mar. 4, 1996)
- Gonzalez-Koeneke v. West, 791 F.3d 801, 807-09 (7th Cir. 2015)
- Fields v. Miller, Case No. 21-1419, 2022 WL 1011666, at *3 (7th Cir. Apr. 5, 2022)
- Pirelli Armstrong Tire Corp. Retiree Medical Benefits Trust v. Walgreen Co., 631 F.3d 436, 448 (7th Cir. 2011)
- Indep. Tr. Corp. v. Stewart Information Services Corp., 665 F.3d 930, 943 (7th Cir. 2011)
- Hecker v. Deere & Co., 556 F.3d 575, 591 (7th Cir. 2009)

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