

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

NOV 13 2009

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

JOSE MONTANEZ, Jr.,

Petitioner - Appellant,

v.

TOM FELKER, Warden,

Respondent - Appellee.

No. 07-56726

D.C. No. CV-07-00091-GW(PLA)

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
George H. Wu, District Judge, Presiding

Argued and Submitted November 6, 2009  
Pasadena, California

Before: SCHROEDER and IKUTA, Circuit Judges, and SEDWICK,\*\* District  
Judge.

Jose Montanez, Jr., is a California state prisoner appealing the district  
court's dismissal of his 28 U.S.C. § 2254 petition as untimely. Petitioner is not  
entitled to equitable tolling, because he has failed to show diligence. *See Bryant v.*

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

\*\* The Honorable John W. Sedwick, United States District Judge for the  
District of Alaska, sitting by designation.

*Ariz. Atty. Gen.*, 499 F.3d 1056, 1061 (9th Cir. 2007). The district court did not clearly err in finding that petitioner did not demonstrate that he requested his legal materials while in Administrative Segregation or made any effort to prepare a petition before such Segregation.

**AFFIRMED.**