

NOT FOR PUBLICATION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.*

* 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.