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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAMES EARL SMITH,

Petitioner - Appellant,

v.

JOHN MARSHALL,

Respondent - Appellee.

No. 06-55894

D.C. No. CV-05-05343-GHK

MEMORANDUM\*

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

Submitted December 15, 2009\*\*

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

California state prisoner James Earl Smith appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 habeas petition. We have

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

jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

The statute of limitations under 28 U.S.C. § 2244(d) began to run on August 9, 2000, the day following the denial of Smith's administrative appeal from the denial of parole. *See Redd v. McGrath*, 343 F.3d 1077, 1082-85 (9th Cir. 2003). Even applying all possible statutory tolling to the time Smith's state habeas petitions were pending in state court, the limitations period expired on December 13, 2004. Accordingly, the instant § 2254 petition, which was submitted to prison officials for mailing on June 23, 2005, was untimely.

**AFFIRMED.**