

FEB 12 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JACOB BOWMAN,

Petitioner - Appellant,

v.

KEVIN MILYARD, Warden for Sterling  
Corr. Facility,

Respondent - Appellee.

No. 09-35255

D.C. No. 2:08-cv-00743-RAJ

MEMORANDUM\*

Appeal from the United States District Court  
for the Western District of Washington  
Richard A. Jones, District Judge, Presiding

Argued and Submitted February 1, 2010

Seattle, Washington

Before: ALARCÓN, W. FLETCHER and RAWLINSON, Circuit Judges.

Petitioner-Appellant Jacob Bowman appeals the district court's decision denying his habeas petition. We affirm.

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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 statute of limitations began to run on February 5, 2001, as soon as Bowman's conviction became final on direct appeal. Bowman's state court Personal Restraint Petition was not filed for more than a year after that date. The Washington Supreme Court's decision, *In re Bowman*, 172 P.3d 681 (Wash. 2007), was not a "fact" within the meaning of 28 U.S.C. § 2244(d)(1)(D). Neither *Redd v. McGrath*, 343 F.3d 1077, 1081-82 (9th Cir. 2003), nor *Shelby v. Bartlett*, 391 F.3d 1061, 1062 (9th Cir. 2004), supports Bowman's contention that the Washington Supreme Court's decision served as the factual predicate in his case. Bowman's petition was not timely filed under 28 U.S.C. § 2244(d)(1).

Bowman has not met his burden of showing that equitable tolling is appropriate in this case. He has not demonstrated that any extraordinary circumstances beyond his control prevented him from filing a timely petition. *See Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005); *Harris v. Carter*, 515 F.3d 1051, 1055 (9th Cir. 2008).

AFFIRMED.