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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NOEL PHILLIPE SCOTT,

Petitioner - Appellant,

v.

D. K. SISTO,

Respondent - Appellee.

No. 07-16583

D.C. No. CV-05-02646-JW

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
James Ware, District Judge, Presiding

Submitted February 16, 2010\*\*

Before: FERNANDEZ, GOULD, and M. SMITH, Circuit Judges.

California state prisoner Noel Phillippe Scott appeals pro se from the district court's judgment dismissing his 28 U.S.C. § 2254 habeas petition as untimely. We have jurisdiction pursuant to 28 U.S.C. § 2253, and 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 panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Scott contends that the district court erred by denying him statutory tolling. This contention fails because the California superior court denied Scott's petition as untimely, and therefore his state petition was not "properly filed," as required by 28 U.S.C. § 2244(d)(2). *See Pace v. DiGuglielmo*, 554 U.S. 408, 417 (2005); *see also Townsend v. Knowles*, 562 F.3d 1200, 1205 (9th Cir. 2009).

Scott further contends that he was entitled to equitable tolling because his delays in filing were caused by his lack of access during various time periods to his legal materials, and the law library. The district court did not err by determining that he was not entitled to equitable tolling because he failed to meet his burden of demonstrating that extraordinary circumstances rather than his own lack of diligence caused the untimeliness of his federal habeas petition. *See Waldron-Ramsey v. Pacholke*, 556 F.3d 1008, 1013-14 (9th Cir. 2009).

**AFFIRMED.**