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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>STEVEN BOYD HARPER,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>KEN CLARK,</p> <p>Respondent - Appellee.</p>

No. 07-56428

D.C. No. CV-06-01683-JM(PCL)

MEMORANDUM *

Appeal from the United States District Court
for the Southern District of California
Jeffrey T. Miller, District Judge, Presiding

Submitted December 16, 2009 **

Before: SKOPIL, LEAVY and T.G. NELSON, Circuit Judges.

Steven Boyd Harper, a California state prisoner, appeals the district court’s dismissal of his federal habeas petition for failure to comply with the one-year statute of limitations of the Antiterrorism and Effective Death Penalty Act (“AEDPA”), 28 U.S.C. § 2244(d)(1). We have jurisdiction pursuant to 28 U.S.C. §§ 1291 and 2253, and we affirm.

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

A habeas petition is timely if filed within AEDPA's one-year statute of limitation period. 28 U.S.C. § 2244(d)(1). A petition can also be timely, even if filed after the one-year time period has expired, when tolling applies. *See Tillema v. Long*, 253 F.3d 494, 498 (9th Cir. 2001). Harper contends he is entitled to such tolling because he did not receive notice of the California Supreme Court's decision denying his state petition.

The State has submitted evidence, however, which indicates Harper did receive notice of the California Supreme Court's decision. Harper does not dispute the accuracy of this evidence. In fact, it is corroborated by other evidence he submitted to the district court. Because the State's evidence demonstrates that the issues before this court are entirely without merit and a remand to the district court would waste judicial resources, we affirm the judgment of the district court.

We deny Harper's motion to strike the evidence from the record.

AFFIRMED.