

UNITED STATES COURT OF APPEALS

APR 12 2010

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MICHAEL PAUL RAMOS,

Petitioner - Appellant,

v.

JAMES A. YATES,

Respondent - Appellee.

No. 09-55031

D.C. No. 3:05-cv-01712-MMA-
JMA

Southern District of California,
San Diego

ORDER

Before: KLEINFELD, WARDLAW and CALLAHAN, Circuit Judges.

The memorandum disposition filed on February 17, 2010, is amended as follows:

After the second paragraph, which ends on page 2, insert the following paragraph:

Although we have held that equitable tolling may be warranted in cases pending when *Pace* was decided, where petitioners “relied in good faith on then-binding circuit precedent in making his tactical decision to delay filing a federal habeas petition,” *Harris v. Carter*, 515 F.3d 1051, 1053 (9th Cir. 2008),

this is not such a case. *See also Townsend v. Knowles*, 562 F.3d 1200, 1206 (9th Cir. 2009). Unlike the petitioners in *Harris* and *Townsend*, whose petitions became untimely the moment *Pace* was decided, Ramos would have had 124 days after *Pace* became binding law to file a “protective” petition in federal court. *See Pace*, 544 U.S. at 417.

With this amendment, the panel has voted to deny the petition for rehearing. The petition for rehearing is DENIED. No further petitions for rehearing or rehearing en banc will be entertained.