

APR 15 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANK MICHAEL PEREA,  
  
Petitioner - Appellant,  
  
v.  
  
PAULA SOELLE; et al.,  
  
Respondents - Appellees.

No. 08-16527

D.C. No. 2:07-cv-02028-ROS

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
Roslyn O. Silver, District Judge, Presiding

Submitted April 5, 2010\*\*

Before: RYMER, McKEOWN, and PAEZ, Circuit Judges.

Former Arizona state prisoner Frank Michael Perea 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).

Perea contends he is entitled to equitable tolling because an assistant federal public defender, not representing him, provided an outdated courthouse mailing address that caused him to file his habeas petition late. We agree with the district court that Perea has not demonstrated that an extraordinary circumstance beyond his control prevented him from timely filing his habeas petition, or that he has been pursuing his rights diligently. *See Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005); *see also Miranda v. Castro*, 292 F.3d 1063, 1068 (9th Cir. 2002).

We construe Perea's additional arguments as a motion to expand the certificate of appealability. So construed, the motion is denied. *See* 9th Cir. R. 22-1(e); *see also Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999) (per curiam).

**AFFIRMED.**