

JUN 07 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>KENNETH RAY WILSON,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>ROBERT J. HERNANDEZ,</p> <p>Respondent - Appellee.</p>

No. 08-55733

D.C. No. 2:06-cv-00596-DDP

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dean D. Pregerson, District Judge, Presiding

Submitted May 25, 2010**

Before: CANBY, THOMAS, and W. FLETCHER, Circuit Judges.

California state prisoner Kenneth Ray Wilson appeals from the district court's order dismissing his 28 U.S.C. § 2254 habeas petition. We have jurisdiction under 28 U.S.C. § 2253, and we affirm.

* 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).

The district court dismissed Wilson's petition as untimely and granted a certificate of appealability on that issue. Wilson fails to address the district court's determination that his federal habeas petition was untimely. Even assuming that Wilson was entitled to equitable tolling, as he argued before the district court, his petition is still untimely because his petition was never properly filed before the state courts. *See Thorson v. Palmer*, 479 F.3d 643, 645-46 (9th Cir. 2007).

Because Wilson's petition is untimely, we do not address his substantive claims. To the extent Wilson raises arguments that were not included in his petition to the district court, they are not cognizable on appeal. *See Belgarde v. Montana*, 123 F.3d 1210, 1216 (9th Cir. 1997).

AFFIRMED.