

JUN 10 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| <p>PAUL MICHAEL TEAHAN,</p> <p style="text-align: center;">Petitioner - Appellant,</p> <p>v.</p> <p>V. M. ALMAGER; EDMUND G. BROWN, Jr.,</p> <p style="text-align: center;">Respondents - Appellees.</p> |
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No. 08-55608

D.C. No. 3:07-cv-00586-WQH

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
William Q. Hayes, District Judge, Presiding

Submitted May 25, 2010**

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

California prisoner Paul Michael Teahan appeals from the district court's judgment dismissing his 28 U.S.C. § 2254 habeas petition as untimely. 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).

Teahan contends that new reliable evidence of actual innocence entitles him to equitable tolling and excuses the untimely filing of his petition. Teahan bases his claim of actual innocence primarily upon the unsworn alibi statements four witnesses provided to a defense investigator during pre-trial investigation.

Assuming that the actual innocence gateway of *Schlup v. Delo*, 513 U.S. 298, 327 (1995), provides a basis for equitable tolling, Teahan has failed to show that, based on this evidence, it is more likely than not that no reasonable juror would have found him guilty beyond a reasonable doubt. *See Smith v. Baldwin*, 510 F.3d 1127, 1142 (9th Cir. 2007). Therefore, the district court did not err in dismissing his petition as untimely.

AFFIRMED.