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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>EVERETT V. REEDY,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>JEAN HILL,</p> <p>Respondent - Appellee.</p>

No. 08-35188

D.C. No. 04-CV-00525-MRH

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Michael R. Hogan, District Judge, Presiding

Submitted May 25, 2010**

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

Oregon state prisoner Everett V. Reedy appeals from the district court’s judgment 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 the petition, among other reasons, because it was untimely. Reedy contends that his petition was timely under 28 U.S.C. § 2244(d)(1)(C) because he filed it within one year of the Supreme Court's decision in *Blakely v. Washington*, 542 U.S. 296 (2004). This argument lacks merit because Reedy's conviction and sentence became final before *Blakely* was decided. *See* 28 U.S.C. § 2244(d)(1)(C); *see also* *Schardt v. Payne*, 414 F.3d 1025, 1038 (9th Cir. 2005) (concluding that the new rule announced in *Blakely* does not apply retroactively to a conviction and sentence that were final before that decision was announced).

In light of this disposition, we do not reach Reedy's contention that he has a constitutional right to a unanimous jury verdict.

To the extent that Reedy contends that he received ineffective assistance of counsel, we construe Reedy's briefing 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.