

JUN 17 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff - Appellee,</p> <p>v.</p> <p>TU MINH TRUONG,</p> <p style="text-align: center;">Defendant - Appellant.</p>
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No. 08-16526

D.C. Nos. 2:07-cv-01213-WBS
2:00-cr-00411-WBS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
William B. Shubb, District Judge, Presiding

Submitted May 25, 2010**

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

Tu Minh Truong appeals pro se from the district court’s judgment dismissing his 28 U.S.C. § 2255 motion as untimely. We have jurisdiction pursuant to 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 correctly determined that Truong's petition was not filed within the one-year limitations period. Truong contends that he is entitled to equitable tolling because of his lack of proficiency in English. Our review of the record indicates that the district court did not err in rejecting this argument. *See Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005); *cf. Mendoza v. Carey*, 449 F.3d 1065, 1070 (9th Cir. 2006). We decline to address Truong's additional equitable tolling arguments, which he raised for the first time on appeal. *See Jiminez v. Rice*, 276 F.3d 478, 481 (9th Cir. 2001).

In addition, the district court did not err by not sua sponte appointing counsel to represent Truong. *See* 18 U.S.C. § 3006A(a)(2)(B).

Truong's request to proceed in forma pauperis is denied as unnecessary.

AFFIRMED.