

JUN 18 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT E. GALLEGOS, Sr.,

Petitioner - Appellant,

v.

D. K. SISTO, Warden and ALISON ELLE
ALEMAN,

Respondents - Appellees.

No. 08-17255

D.C. No. 2:04-cv-02741-MCE

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Morrison C. England, Jr., District Judge, Presiding

Submitted May 25, 2010**

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

California state prisoner Robert E. Gallegos, Sr. 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).

Gallegos contends that he is entitled to equitable tolling because his mental and physical impairments prevented him from timely filing his habeas petition. This contention fails because Gallegos has not demonstrated that an extraordinary circumstance beyond his control caused the untimeliness. *See Gaston v. Palmer*, 417 F.3d 1030, 1034-35 (9th Cir. 2005), *amended on other grounds by*, 447 F.3d 1165 (9th Cir. 2006).

Gallegos's contention that he is also entitled to equitable tolling because he relied on a mistaken interpretation of then-existing precedent also fails. *See Chaffer v. Prosper*, 592 F.3d 1046, 1049 (9th Cir. 2010) (per curiam).

AFFIRMED.