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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>RONALD DEAN McCALL,</p> <p style="text-align: center;">Petitioner - Appellant,</p> <p>v.</p> <p>SHARON BLACKETTER, Superintendent of Eastern Oregon Correctional Institution,</p> <p style="text-align: center;">Respondent - Appellee.</p>
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No. 08-35705

D.C. No. 3:06-cv-01059-GMK

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Oregon  
Garr M. King, District Judge, Presiding

Submitted June 29, 2010\*\*

Before: ALARCÓN, LEAVY, and GRABER, Circuit Judges.

Oregon state prisoner Ronald Dean McCall 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.

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\* 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).

McCall contends that he is entitled to equitable tolling because his counsel failed to file his state petition for post-conviction relief in time to preserve his right to seek federal habeas relief. This contention fails because McCall has not demonstrated diligence or that an extraordinary circumstance beyond his control prevented him from timely filing his habeas petition. *See Lawrence v. Florida*, 549 U.S. 327, 336-37 (2007); *cf. Spitsyn v. Moore*, 345 F.3d 796, 801 (9th Cir. 2003). McCall's contention that he is entitled to an evidentiary hearing on the issue of equitable tolling also fails. *See Tapia v. Roe*, 189 F.3d 1052, 1058 (9th Cir. 1999).

We construe McCall's briefing of additional issues 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.**