

AUG 02 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CLARKE SHELDON LOWE,

Petitioner - Appellant,

v.

JAMES E. TILTON, Secretary, California
Department of Corrections and
Rehabilitation,

Respondent - Appellee.

No. 08-56737

D.C. No. 3:07-cv-02232-LAB

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Submitted July 19, 2010**

Before: B. FLETCHER, REINHARDT, and WARDLAW, Circuit Judges.

* 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).

California state prisoner Clarke Sheldon Lowe 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 § 2253¹, and we affirm.

Lowe contends that he is entitled to statutory tolling under 28 U.S.C. § 2244(d)(2). We agree with the district court's determination that Lowe failed to demonstrate that he is entitled to statutory tolling for the period between the Superior Court's decision denying his state habeas petition and the filing of his petition in the California Court of Appeal. *See Chaffer v. Prosper*, 592 F.3d 1046, 1048 (9th Cir 2010) (per curiam) (holding that petitioner is not entitled to statutory tolling "[b]ecause Chaffer's filing delays were substantially longer than the 30 to 60 days that most States allow for filing petitions") (internal quotation marks omitted).

AFFIRMED.

¹ We certify for appeal, on our own motion, the issue of whether Lowe's habeas petition was timely filed.