

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 19 2011

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

DANIEL ELOY ROMERO,

Plaintiff - Appellant,

v.

GAY; ARIZONA ATTORNEY
GENERAL,

Respondents - Appellees.

No. 07-16353

D.C. No. CV-04-00825-FJM

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Frederick J. Martone, District Judge, Presiding

Submitted January 12, 2011**
San Francisco, California

Before: HUG, SCHROEDER, and RAWLINSON, Circuit Judges.

Arizona state prisoner Daniel Eloy Romero appeals from the district court's judgment dismissing his 28 U.S.C. § 2254 habeas petition 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 did not err by finding that Romero’s federal habeas petition is barred by the one-year statute of limitations of 28 U.S.C. § 2244(d)(1). Romero is not entitled to statutory tolling under 28 U.S.C. § 2244(d)(2) because his February 2003 letter requesting sentence clarification can not be construed as a “properly filed application for State post-conviction relief or other collateral review” 28 U.S.C. § 2244(d)(2). Furthermore, Romero is not entitled to equitable tolling because he has failed to demonstrate the existence of extraordinary circumstances beyond his control that made it impossible for him to file a petition on time. *Spitsyn v. Moore*, 345 F.3d 796, 799 (9th Cir. 2003).

In light of the foregoing disposition, we decline to consider the merits of Romero’s argument regarding the denial of earned release credits.

AFFIRMED.