

FEB 15 2011

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U.S. COURT OF APPEALS

LNOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JANET L. MORA,</p> <p style="text-align: center;">Petitioner - Appellant,</p> <p style="text-align: center;">v.</p> <p>MARY LATTIMORE, Warden,</p> <p style="text-align: center;">Respondent - Appellee.</p>

No. 08-56018

D.C. No. CV-07-05519-MMM-
AGR

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Margaret M. Morrow, District Judge, Presiding

Submitted December 14, 2010*

Before: SKOPIL, FARRIS, and LEAVY, Circuit Judges.

California state prisoner Janet Mora appeals from the district court's judgment dismissing her 28 U.S.C. § 2254 petition as untimely filed. We have jurisdiction pursuant to 28 U.S.C. §§ 1291 and 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 finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Mora contends she is entitled to equitable tolling of AEDPA's one-year limitation period. This contention lacks merit. Even assuming the statute of limitations began to run when Mora first learned that counsel had not filed an appeal, her petition remains untimely. Equitable tolling is not warranted because Mora failed to show she exercised diligence in pursuing relief or that extraordinary circumstances prevented the timely filing of her § 2254 petition. *See Holland v. Florida*, 130 S.Ct. 2549, 2562 (2010); *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005); *Miranda v. Castro*, 292 F.3d 1063, 1066-67 (9th Cir. 2002).

We decline to consider the uncertified issue raised in Mora's brief as she has not made a "substantial showing of the denial of a constitutional right." *See* 28 U.S.C. § 2253(c)(2); *see also Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Hiivala v. Wood*, 195 F.3d 1098, 1104 (9th Cir. 1999) (per curiam).¹

AFFIRMED.

¹ Mora's unopposed request for judicial notice is GRANTED in part. The court takes judicial notice of the trial court's minute order of July 29, 2005 and Mora's Motion for Production of Transcripts filed September 14, 2006.