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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GREGORY RICHARD TORREZ,

Petitioner - Appellant,

v.

STATE OF ARIZONA ATTORNEY
GENERAL and CHARLES L. RYAN,
Interim Director of Arizona Department of
Corrections,

Respondents - Appellees.

No. 09-16577

D.C. No. 2:08-cv-00952-NVW

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Neil V. Wake, District Judge, Presiding

Submitted February 15, 2011**

Before: CANBY, FERNANDEZ, and M. SMITH, Circuit Judges.

Arizona state prisoner Gregory Richard Torrez appeals pro se from the district court's judgment denying and dismissing his 28 U.S.C. § 2254 habeas

* 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).

petition as untimely. We have jurisdiction under 28 U.S.C. § 2253, and we affirm.

Torrez contends that the district court erred by treating his second state petition for post-conviction relief as a collateral attack on his conviction rather than as an amendment to his original Rule 32 petition for purposes of calculating the timeliness of his petition. The district court did not err. *See Summers v. Schriro*, 481 F.3d 710, 715-17 (9th Cir. 2007). Accordingly, Torrez's federal petition was properly dismissed as untimely.

We construe Torrez's additional arguments 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.