

OCT 5 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BERNARD RHODES,

Petitioner - Appellant,

v.

M. C. KRAMER, Warden,

Respondent - Appellee.

No. 10-16889

D.C. No. 2:08-cv-03122-GEB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Garland E. Burrell, Jr., District Judge, Presiding

Submitted September 27, 2011**

Before: HAWKINS, SILVERMAN, and W. FLETCHER, Circuit Judges.

California State prisoner Bernard Rhodes appeals pro se 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.

* 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).

Rhodes contends that he is entitled to equitable tolling because of limited access to the prison library caused by closures and prison lockdowns. The district court did not clearly err in finding that limited library access did not prevent Rhodes from timely filing his habeas petition, and Rhodes has not demonstrated that an extraordinary circumstance beyond his control warrants equitable tolling. *See Holland v. Florida*, 130 S. Ct. 2549, 2562 (2010).

We construe appellant'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.