

DEC 21 2011

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>OMAR SHARRIEFF GAY,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>A. HEDGPETH, Warden,</p> <p>Respondent - Appellee.</p>

No. 10-55727

D.C. No. 2:09-cv-02113-DDP

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dean D. Pregerson, District Judge, Presiding

Submitted December 19, 2011**

Before: GOODWIN, WALLACE, and McKEOWN, Circuit Judges.

California state prisoner Omar Sharrieff Gay appeals pro se from the district court's judgment dismissing his 28 U.S.C. § 2254 petition because he failed to meet the requirements for the filing of a successive habeas petition, and because it was 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).

The district court granted a certificate of appealability with respect to whether Gay satisfied the requirements of 28 U.S.C. § 2244(b) for filing a second or successive petition, but denied one with respect to whether the petition was untimely. We may affirm on any ground supported by the record. *See McCormick v. Adams*, 621 F.3d 970, 975 (9th Cir. 2010). The district court properly concluded that Gay's habeas petition was untimely because it was filed more than twelve years after the Antiterrorism and Effective Death Penalty Act's limitations period had ended, and Gay has failed to demonstrate that he is entitled to either statutory or equitable tolling. *See* 28 U.S.C. § 2244(d)(2); *see also Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005).

We construe Gay'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*).

Gay's motion for appointment of counsel is denied.

AFFIRMED.