

DEC 23 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DONALD LINAMAN,

Petitioner - Appellant,

v.

JACK PALMER; ATTORNEY  
GENERAL FOR THE STATE OF  
NEVADA,

Respondents - Appellees.

No. 09-16961

D.C. No. 3:08-cv-00364-LRH

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Nevada  
Larry R. Hicks, District Judge, Presiding

Submitted December 19, 2011\*\*

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

Nevada state prisoner Donald Linaman appeals from the district court's judgment dismissing his 28 U.S.C. § 2254 habeas petition as untimely and unexhausted. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

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\* 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).

Linaman contends that the district court erred when it found that his petition was untimely and unexhausted. The district court did not err when it determined that the petition was untimely. *See* 28 U.S.C. § 2244(d); *Artuz v. Bennett*, 531 U.S. 4, 8 (2000) (a petition is “properly filed” when the petition’s “delivery and acceptance are in compliance with the applicable laws and rules governing filings” in that state). Nor did the district court err in concluding that the petition was unexhausted based on Linaman’s failure to fairly present a federal claim to the state court. *See Peterson v. Lampert*, 319 F.3d 1153, 1158 (9th Cir. 2003) (en banc).

**AFFIRMED.**