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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ROBERT BATTISTE,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>ANTHONY HEDGPETH, Warden,</p> <p>Respondent - Appellee.</p>

No. 11-15686

D.C. No. 2:09-cv-01390-JAM

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
John A. Mendez, District Judge, Presiding

Submitted January 17, 2012

Before: LEAVY, TALLMAN, and CALLAHAN, Circuit Judges.

California state prisoner Robert Battiste 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.

Battiste contends that the district court erred by dismissing his petition as

* 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).

untimely because his attorney's failure to file a federal habeas petition entitles him to equitable tolling. Battiste is not entitled to equitable tolling because he has not shown that his attorney's conduct was so egregious as to constitute an "extraordinary circumstance" that prevented him from filing a timely petition. *See Holland v. Florida*, 130 S. Ct. 2549, 2563-64 (2010). He also has not shown that he was diligent in pursuing his rights during the relevant time periods. *See Bryant v. Ariz. Att'y Gen.*, 499 F.3d 1056, 1061 (9th Cir. 2007). Accordingly, we affirm the dismissal of Battiste's petition.

AFFIRMED.