

JAN 27 2012

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAMES WALTER WERBY,

Petitioner - Appellant,

v.

MARK NOOTH,

Respondent - Appellee.

No. 11-35217

D.C. No. 3:08-cv-01381-PK

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Garr M. King, District Judge, Presiding

Submitted January 17, 2012**

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

Oregon state prisoner James Walter Werby appeals from the district court's judgment dismissing his 28 U.S.C. § 2254 habeas petition. 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. Appellant. P. 34(a)(2).

Werby contends that he is entitled to equitable tolling because of the restrictive conditions under which he was incarcerated. Even assuming this alleged deprivation was an “extraordinary circumstance,” equitable tolling is not warranted because Werby failed to show that he exercised diligence in pursuing federal relief or that extraordinary circumstances prevented the timely filing of his section 2254 petition. *See Holland v. Florida*, 130 S. Ct. 2549, 2562 (2010).

Werby’s request that we remand for an evidentiary hearing is denied.

AFFIRMED.