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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JAMES ARTHUR MULGREW,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>M. McDONALD, Warden,</p> <p>Respondent - Appellee.</p>
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No. 09-17737

D.C. No. 2:09-cv-00767-MCE

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Morrison C. England, Jr., District Judge, Presiding

Submitted July 17, 2012\*\*

Before: SCHROEDER, THOMAS, and SILVERMAN, Circuit Judges.

California state prisoner James Arthur Mulgrew appeals 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.

Mulgrew contends that the district court erred in dismissing his petition as

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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).

untimely. We need not decide whether Mulgrew was entitled to any form of tolling to render his petition timely because the district court lacked jurisdiction to consider the petition. *See* 28 U.S.C. § 2254(a); *Bailey v. Hill*, 599 F.3d 976, 982 (9th Cir. 2010) (“§ 2254(a) does not confer jurisdiction over a state prisoner’s in-custody challenge to a restitution order imposed as part of a criminal sentence”); *Washington v. Lampert*, 422 F.3d 864, 869 (9th Cir. 2005) (reviewing court may affirm on any ground supported by the record).

**AFFIRMED.**