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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NOT FOR PUBLICATION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>

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

* 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.