

SEP 24 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DIEGO QUIROZ,

Petitioner - Appellant,

v.

MIKE McDONALD,

Respondent - Appellee.

No. 11-17473

D.C. No. 4:09-cv-04940-PJH

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Phyllis J. Hamilton, District Judge, Presiding

Submitted September 10, 2012**

Before: WARDLAW, CLIFTON, and N.R. SMITH, Circuit Judges.

California state prisoner Diego Quiroz appeals pro se from the district court's judgment dismissing his 28 U.S.C. § 2254 habeas petition. We dismiss for lack of jurisdiction.

* 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).

Quiroz contends that the he was denied his Sixth Amendment right to have a jury decide the facts supporting an upper term sentence. Because Quiroz did not file his notice of appeal within thirty days of the entry of judgment, we do not have jurisdiction over this appeal. *See* Fed. R. App. P. 4(a)(1)(A); *United States v. Sadler*, 480 F.3d 932, 937 (9th Cir. 2007).

DISMISSED.