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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOE HOWARD KEEL, II,

Petitioner - Appellant,

v.

JAMES E. TILTON, Director of
Corrections; ATTORNEY GENERAL
FOR THE STATE OF CALIFORNIA,

Respondents - Appellees.

No. 09-17374

D.C. No. 1:06-cv-01073-AWI

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Anthony W. Ishii, District Judge, Presiding

Submitted November 13, 2012**

Before: CANBY, TROTT, and W. FLETCHER, Circuit Judges.

California state prisoner Joe Howard Keel, II, appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 habeas petition. We have

* 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).

jurisdiction under 28 U.S.C. § 2253, and we affirm.

Keel filed a motion for a stay of proceedings concurrently with his habeas petition. Keel subsequently withdrew his request for a stay and filed multiple motions to amend his petition. Keel now contends that the district court should have stayed proceedings and granted his motions to amend.

The district court did not err by failing to grant a stay of proceedings because Keel withdrew that motion. The district court also did not abuse its discretion by denying Keel's motions to amend because amendment would have been futile. *See Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995). The new claims lack merit and would have been untimely because they did not relate back to the claims set forth in the original petition. *See Hebner v. McGrath*, 543 F.3d 1133, 1138-39 (9th Cir. 2008); *Bonin*, 59 F.3d at 846.

We construe Keel's additional arguments as a motion to expand the certificate of appealability. So construed, the motion is denied. *See* 9th Cir. R. 22-1(e); *Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999) (per curiam).

AFFIRMED.