

SEP 19 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>EULALIO GUERRERO, II,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>FRANK X. CHAVEZ,</p> <p>Respondent - Appellee.</p>
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No. 11-16333

D.C. No. 2:10-cv-00905-JAM-DAD

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
John A. Mendez, District Judge, Presiding

Argued and Submitted September 9, 2013  
San Francisco, California

Before: SCHROEDER and BYBEE, Circuit Judges, and BATTAGLIA, District Judge.\*\*

California State prisoner Eulalio Guerrero appeals the district court’s dismissal of his 28 U.S.C. § 2254 habeas corpus petition challenging his 2006 child molestation conviction after a jury trial. The district court dismissed the

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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 Honorable Anthony J. Battaglia, United States District Judge for the Southern District of California, sitting by designation.

petition as untimely because it was filed more than one year after the state conviction became final. 28 U.S.C. § 2244(d)(1). Petitioner claims that he is entitled to equitable tolling.

The Supreme Court has held that a petitioner is entitled to equitable tolling only if he has been diligent, and extraordinary circumstances prevented him from timely filing. *Holland v. Florida*, 130 S. Ct. 2549, 2562 (2010). Petitioner's only argument is that he relied for two years on his daughter's representations that she would find him a lawyer. Guerrero was not diligent, for he has made no showing that he made efforts to obtain counsel himself or make use of the prison law library. *See Bills v. Clark*, 628 F.3d 1092, 1101 (9th Cir. 2010) (to be diligent, must make use of whatever assistance is available). There are no extraordinary circumstances similar to the abandonment by counsel that occurred in *Maples v. Thomas*, 132 S. Ct. 912 (2012).

**AFFIRMED.**