

SEP 24 2013

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHNNY ARAFILES,

Petitioner - Appellant,

v.

BEN CURRY; ATTORNEY GENERAL  
FOR THE STATE OF CALIFORNIA,

Respondents - Appellees.

No. 12-16072

D.C. No. 2:06-cv-01678-KJM-  
EFB

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Kimberly J. Mueller, District Judge, Presiding

Submitted September 10, 2013\*\*  
San Francisco, California

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

---

\* 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).

\*\*\* The Honorable Robert J. Timlin, Senior United States District Judge  
for the Central District of California, sitting by designation.

California state prisoner Johnny Arafiles appeals the district court's dismissal of his 28 U.S.C. § 2254 habeas corpus petition challenging the parole board's denials of parole after originally finding him eligible in 1991. Arafiles contends that his petition is timely under the continuing violation doctrine.

Although the parole board granted Arafiles parole and fixed his term in 1991, the Governor reversed that decision. Relying on *In re Dannenberg*, 104 P.3d 783, 800 (Cal. 2005), the California courts concluded that, because of the Governor's reversal of the grant of parole, the term was not fixed in 1991 and that Arafiles is serving an indeterminate term. Arafiles cannot claim a violation of his rights based on detention beyond the term of his sentence, because the term of his sentence has not been set.

**AFFIRMED.**