

OCT 03 2013

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BEGOIA MORGANDE,

Petitioner - Appellant,

v.

JAMES E. TILTON; D. K. SISTO,
Warden,

Respondents - Appellees.

No. 12-16267

D.C. No. 2:07-cv-01824-MMS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Mary M. Schroeder, Circuit Judge, Presiding**

Submitted September 24, 2013***

Before: RAWLINSON, N.R. SMITH, and CHRISTEN, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The Honorable Mary M. Schroeder, Senior United States Circuit Judge for the United States Court of Appeals for the Ninth Circuit, sitting by designation.

*** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

California state prisoner Begoia Morgande appeals pro se from the district court's order denying his motion to reopen the time to file an appeal of the judgment. We affirm.

Morgande contends the district court erred when it denied his motion to reopen the time to file an appeal. We review for abuse of discretion. *See United States v. Withers*, 638 F.3d 1055, 1061 (9th Cir. 2011). The district court did not abuse its discretion when it denied Morgande's motion under Federal Rule of Appellate Procedure 4(a)(6) because it was filed more than two years after the judgment had been entered. *See Fed. R. App. P. 4(a)(6)(B); In re Stein*, 197 F.3d 421, 425 (9th Cir. 1999) (district courts lack discretion to grant motions to reopen filed outside the 180-day period in Rule 4(a)(6)(B) even if appellant did not receive notice of the judgment).

We construe Morgande'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.