

OCT 10 2013

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CODY WILLIAM MARBLE,

Petitioner - Appellant,

v.

ATTORNEY GENERAL OF THE STATE  
OF MONTANA and MIKE FERRITER,  
Director of the Montana Department of  
Corrections is an appellee,

Respondents - Appellees.

No. 10-35159

D.C. No. 9:09-cv-00141-DWM-  
JCL

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Montana  
Donald W. Molloy, District Judge, Presiding

Argued and Submitted October 7, 2013  
Portland, Oregon

Before: SILVERMAN, W. FLETCHER, and CALLAHAN, Circuit Judges.

Cody William Marble appeals the district court's dismissal of his federal habeas petition as time-barred. We agree with the district court that Marble's

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

petition was filed outside of the one-year statute of limitations period set forth in the Antiterrorism and Effective Death Penalty Act of 1996. *See* 28 U.S.C. § 2244(d).

However, it appears that the record was not adequately developed in the district court to allow a determination of whether Marble was eligible for equitable tolling. *See Holland v. Florida*, 130 S. Ct. 2549, 2562 (2010). Indeed, at oral argument both sides agreed that the factual basis for Marble's claim for equitable tolling had not been fully developed in the district court, and accordingly, had not been considered by the district court. Accordingly, the district court's denial of the habeas petition is **VACATED** and the appeal is **REMANDED** for consideration of Marble's claim for equitable tolling.