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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE LUIS MURILLO,

Petitioner - Appellant,

v.

KELLY HARRINGTON, Warden,

Respondent - Appellee.

No. 11-15811

D.C. No. 4:09-cv-03346-CW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Claudia Wilken, Chief District Judge, Presiding

Argued and Submitted November 4, 2013
San Francisco, California

Before: KLEINFELD, THOMAS, and RAWLINSON, Circuit Judges.

Jose Luis Murillo appeals the district court's order dismissing his 28 U.S.C. § 2254 habeas petition as untimely. We have jurisdiction under 28 U.S.C. § 2253, and we affirm.

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

Murillo waited 363 days after his conviction became final before he filed his first habeas petition. He argues that this entire period should be tolled, because he did not possess his legal file. The record does not show that he asked for his legal file during this period. Murillo, therefore, did not establish that he exercised reasonable diligence in pursuing his rights. Cf. Holland v. Florida, 130 S. Ct. 2549, 2565 (2010).

Murillo is not entitled to statutory “gap” tolling between the denial of his first petition in the California Superior Court and the filing of his second petition in that same court, because his second petition added seven new claims. See Stancle v. Clay, 692 F.3d 948, 957-58 (9th Cir. 2012).

We need not consider Murillo’s other arguments for tolling because they would not provide enough tolling to make his petition timely.

AFFIRMED.