

MAR 13 2014

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

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHNNY RAMEY,

Petitioner - Appellant,

v.

R. HILL, Warden,

Respondent - Appellee.

No. 11-16774

D.C. No. 1:11-cv-00449-OWW

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Oliver W. Wanger, District Judge, Presiding

Submitted March 10, 2014**

Before: PREGERSON, LEAVY, and MURGUIA, Circuit Judges.

California state prisoner Johnny Ramey appeals from the district court’s dismissal of his 28 U.S.C. § 2254 habeas petition as untimely. We have jurisdiction under 28 U.S.C. § 2253, and we vacate and remand.

The state argues several alternative bases for affirmance, including that the petition was an unauthorized second or successive petition within the meaning of

* 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).

28 U.S.C. § 2244(b). When Ramey filed his first section 2254 petition, in September 1998, he was in custody pursuant to the state court's July 1998 amended judgment, which is the very judgment that he seeks to challenge in the instant petition. Ramey did not seek authorization prior to filing his petition in this case, and neither his petition nor his brief on appeal makes a prima facie showing of his entitlement to do so. *See* 28 U.S.C. § 2244(b). Accordingly, the district court was without jurisdiction to entertain the petition. *See Burton v. Stewart*, 549 U.S. 147, 156-57 (2007). We vacate and remand with instructions to dismiss the petition for lack of jurisdiction.

VACATED and REMANDED.