

JUL 27 2015

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JESSE L. YOUNGBLOOD,

Petitioner - Appellant,

v.

SUPERIOR COURT OF BUTTE CO.;
STATE OF CALIFORNIA,

Respondents - Appellees.

No. 13-17288

D.C. No. 2:13-cv-01490-GGH

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Gregory G. Hollows, Magistrate Judge, Presiding**

Submitted July 21, 2015***

Before: CANBY, BEA, and MURGUIA, Circuit Judges.

Jesse L. Youngblood appeals from the district court's dismissal of his 28
U.S.C. § 2254 habeas petition as second or successive. We have jurisdiction under

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

** Appellant consented to magistrate judge jurisdiction.

*** 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. § 2253. We review de novo, *see Wentzell v. Neven*, 674 F.3d 1124, 1126 (9th Cir. 2012), and we affirm.

Youngblood contends that the district court should not have deemed his habeas petition second or successive under section 2244(b) because his first habeas petition was not decided on the merits but rather dismissed as barred by the statute of limitations. As Youngblood concedes, this argument is foreclosed by *McNabb v. Yates*, 576 F.3d 1028, 1030 (9th Cir. 2009). We are bound by that decision. *See Hart v. Massanari*, 266 F.3d 1155, 1171 (9th Cir. 2001) (“Once a panel resolves an issue in a precedential opinion, the matter is deemed resolved, unless overruled by the court itself sitting en banc, or by the Supreme Court.”).

AFFIRMED.