

SEP 01 2015

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JASON LEE SCHMIDT,

Petitioner - Appellant,

v.

LEROY KIRKEGARD and ATTORNEY
GENERAL FOR THE STATE OF
MONTANA,

Respondents - Appellees.

No. 14-35699

D.C. No. 2:14-cv-00008-DWM

MEMORANDUM*

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

Submitted August 25, 2015**

Before: McKEOWN, CLIFTON, and HURWITZ, Circuit Judges.

Montana state prisoner Jason Lee Schmidt appeals pro se from the district court's judgment summarily dismissing his 28 U.S.C. § 2254 habeas petition for failure to exhaust. We have jurisdiction under 28 U.S.C. § 2253. We review de

* 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).

novo the dismissal of a section 2254 habeas petition for failure to exhaust, *see Rhoades v. Henry*, 638 F.3d 1027, 1034 (9th Cir. 2011), and we affirm.

Schmidt contends that the district court should have excused the exhaustion requirement because of the Montana state court's delay in addressing his petition for post-conviction relief. At the time the district court dismissed Schmidt's federal petition, his amended state petition had only been pending for two months. On this record, Schmidt has not shown that the available state corrective process is ineffective. *See* 28 U.S.C. § 2254(b)(1)(B); *Coe v. Thurman*, 922 F.2d 528, 530-31 (9th Cir. 1990).

AFFIRMED.