

JAN 28 2016

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARL D. MITCHELL,

Petitioner - Appellant,

v.

CALVIN CHAPPELL, Warden,

Respondent - Appellee.

No. 15-15721

D.C. No. 2:12-cv-00296-MCE

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Morrison C. England, Jr., Chief Judge, Presiding

Submitted January 20, 2016**

Before: CANBY, TASHIMA, and NGUYEN, Circuit Judges.

California state prisoner Carl D. Mitchell appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 habeas petition. We have jurisdiction under 28 U.S.C. § 2253. We review de novo the district court's denial of a habeas petition as untimely, *see Ramirez v. Yates*, 571 F.3d 993, 997 (9th Cir.

* 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)*.

2009), and we affirm.

In his only certified claim on appeal, Mitchell argues that the Supreme Court's decision in *Magwood v. Patterson*, 561 U.S. 320 (2010), reset the one-year statute of limitations period to file a habeas petition under 28 U.S.C.

§ 2244(d)(1)(C). Mitchell's reliance on *Magwood* is misplaced; *Magwood* interpreted the phrase "second or successive" as used in section 2244(b), and it did not newly recognize a constitutional right that has been made retroactively applicable to cases on collateral review. *See* § 2244(d)(1)(C); *Magwood*, 561 U.S. at 331-36.

We treat Mitchell's briefing of additional arguments as a motion to expand the certificate of appealability. So treated, the motion is denied. *See* 9th Cir. R. 22-1(e); *Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999).

AFFIRMED.