

AUG 01 2016

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EDWARD MALLORY,

Defendant - Appellant.

No. 14-17239

D.C. Nos. 2:12-cv-02700-EJG
2:09-cr-00090-WBS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
William B. Shubb, District Judge, Presiding

Submitted July 26, 2016**

Before: SCHROEDER, CANBY, and CALLAHAN, Circuit Judges.

Federal prisoner Edward Mallory appeals from the district court's order denying his 28 U.S.C. § 2255 motion as untimely. We have jurisdiction under 28 U.S.C. § 2253. We review de novo the district court's decision that a section 2255

* 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).

motion is untimely, *see United States v. Battles*, 362 F.3d 1195, 1196 (9th Cir. 2004), and we affirm.

Mallory contends that he is entitled to equitable tolling for the period between January 30, 2012, and July 18, 2012, during which his motion to reduce his sentence under 18 U.S.C. § 3582 was pending in the district court. Neither the pendency of Mallory's section 3582(c)(2) motion nor his lack of legal expertise constitute extraordinary circumstances that kept him from timely filing a section 2255 motion. *See Battles*, 362 F.3d at 1197 (stating standard for equitable tolling); *see also Rasberry v. Garcia*, 448 F.3d 1150, 1154 (9th Cir. 2006) (“[L]ack of legal sophistication is not, by itself, an extraordinary circumstance warranting equitable tolling.”). We further note that the issue presented in Mallory's section 3582(c)(2) motion was unrelated to that presented in his section 2255 motion, and considerations of judicial economy do not require a different result here.

AFFIRMED.