

FILED

APR 9 2020

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PHONSAVANH PHONGMANIVAN,

Petitioner-Appellant,

v.

RON HAYNES, SCCC Superintendent,*

Respondent-Appellee.

No. 16-36018

D.C. No. 2:16-cv-00556-RAJ

MEMORANDUM**

Appeal from the United States District Court
for the Western District of Washington
Richard A. Jones, District Judge, Presiding

Submitted February 6, 2019***

Submission Withdrawn March 19, 2019

Resubmitted April 7, 2020

Seattle, Washington

* Ron Haynes has replaced Margaret Gilbert as Superintendent of Stafford Creek Corrections Center.

** This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

*** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: IKUTA and CHRISTEN, Circuit Judges, and CHOE-GROVES, **** Judge.

Phonsavanh Phongmanivan appeals the dismissal of his petition for habeas corpus. We have jurisdiction under 28 U.S.C. §§ 1291 and 2253(a), and we reverse and remand.

The district court erred in dismissing Phongmanivan's habeas petition as barred by the one-year limitations period in the Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. § 2244(d)(1). The limitations period was tolled when Phongmanivan filed a personal restraint petition with the Washington Court of Appeals on February 4, 2015, *see* § 2244(d)(2), and the tolling ended when the Washington Court of Appeals issued a certificate of finality on April 1, 2016, *see Phongmanivan v. Haynes*, No. 96980-9, 2020 WL 946132, at *4 (Wash. Feb. 27, 2020). Thus, Phongmanivan timely filed his habeas petition on April 9, 2016. *See Phongmanivan v. Haynes*, 918 F.3d 1021, 1023–24 (9th Cir. 2019).

REVERSED AND REMANDED.

**** The Honorable Jennifer Choe-Groves, Judge for the United States Court of International Trade, sitting by designation.