

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 10 2020

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 18-16399

Plaintiff-Appellee,

D.C. Nos. 2:16-cv-01476-JAD

2:95-cr-00324-JAD-1

v.

BARRY ADDISON GRAY,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the District of Nevada

Jennifer A. Dorsey, District Judge, Presiding

Submitted June 8, 2020**
San Francisco, California

Before: MILLER and HUNSAKER, Circuit Judges, and SCHILTZ,** District Judge.

Barry Addison Gray appeals the denial of his 28 U.S.C. § 2255 motion.

After conducting a de novo review, we affirm the judgment of the district court, as

* 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).

*** The Honorable Patrick J. Schiltz, United States District Judge for the District of Minnesota, sitting by designation.

Gray’s motion is clearly untimely under *United States v. Blackstone*, 903 F.3d 1020, 1026-28 (9th Cir. 2018). *See also United States v. Olsen*, 704 F.3d 1172, 1178 (9th Cir. 2013) (standard of review); *Dunne v. Henman*, 875 F.2d 244, 247 (9th Cir. 1989) (“[W]e can affirm on any basis shown by the record.”) (citation omitted). *Blackstone* binds this panel, as it is not “clearly irreconcilable” with the Supreme Court’s decision in *United States v. Davis*, 139 S. Ct. 2319 (2019). *See United States v. Shelby*, 939 F.3d 975, 978 (9th Cir. 2019) (“A three-judge panel can only decline to apply prior Circuit precedent ‘clearly irreconcilable’ with a subsequent Supreme Court decision.”) (citation omitted).

AFFIRMED.