

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 18 2026

FOR THE NINTH CIRCUIT

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

JINWOO PARK,

Petitioner - Appellant,

v.

BRYAN D. PHILLIPS, Acting Warden of
the California Substance Abuse Treatment
Facility and State Prison in Corcoran,

Respondent - Appellee.

No. 25-274

DC No.

2:23-CV-02572-VBF-MAR

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Valerie Baker Fairbank, District Judge, Presiding

Submitted September 16, 2026**
Pasadena, California

Before: R. NELSON and DESAI, Circuit Judges, and SCHREIER, District Judge.***

* 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 Karen E. Schreier, United States District Judge for the District of South Dakota, sitting by designation.

Petitioner Jinwoo Park appeals the judgment and order of the district court adopting the magistrate judge's Report and Recommendation and dismissing all of the claims in Park's habeas petition as untimely. The district court granted a certificate of appealability (COA) on the issue of whether Park is entitled to equitable tolling of the deadline to file his petition under the Antiterrorism and Effective Death Penalty Act (AEDPA). We have jurisdiction under 28 U.S.C. §§ 1291 and 2253, and we deny the petition.

Park also moves that we take judicial notice of the transcripts of his state court pre-trial hearing and criminal trial. Because these transcripts are publicly available records of another court and are directly related to issues in this case, we grant the motion. Fed. R. Evid. 201(b)(2); *see also Trigueros v. Adams*, 658 F.3d 983, 987 (9th Cir. 2011).

"We review the district court's denial of habeas corpus for untimeliness *de novo*." *Laws v. Lamarque*, 351 F.3d 919, 922 (9th Cir. 2003) (citing *Herbst v. Cook*, 260 F.3d 1039, 1042 (9th Cir. 2001)). "[F]indings of fact made by the district court are reviewed for clear error." *Miles v. Prunty*, 187 F.3d 1104, 1105 (9th Cir. 1999) (citing *Moran v. McDaniel*, 80 F.3d 1261, 1268 (9th Cir. 1996)). But where "the facts are undisputed as to the question of equitable tolling, we review *de novo*." *Id.* (citing *Valenzuela v. Kraft, Inc.*, 801 F.2d 1170, 1172 (9th Cir. 1986)).

1. Park first argues that the AEDPA statute of limitations should have commenced on April 21, 2017, because he did not discover a Department of Children and Family Services (DCFS) file containing the facts giving rise to his petition until that date. 28 U.S.C. § 2244(d)(1)(D) provides that the AEDPA statute of limitations period can commence on “the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.” *See Ford v. Gonzalez*, 683 F.3d 1230, 1235 (9th Cir. 2012). “Due diligence does not require the maximum feasible diligence, but it does require reasonable diligence in the circumstances.” *Ford*, 683 F.3d at 1235 (internal quotation marks omitted).

A delayed start date under § 2244(d)(1)(D) is only available to petitioners who discover “vital facts [that] could not have been known by the date the appellate process ended.” *Ford*, 683 F.3d at 1235 (citation and internal quotation marks omitted). Because Park attended the DCFS and juvenile hearings, he would have been aware of the facts giving rise to his petition before the expiration of the AEDPA deadline if he had exercised due diligence. Thus, Park is not entitled to a later commencement date of the statute of limitations.

2. Even if Park’s AEDPA deadline was delayed until April 2018, his petition would still be untimely because he did not file it until April 2023. Park’s level of English proficiency, limited access to prison legal materials, and

abandonment by one of the attorneys he hired to prepare his petition do not entitle him to equitable tolling until that late date. The record demonstrates that Park was able to comprehend English during this period. It contains various letters he wrote in English, including a letter to the California State Bar acknowledging his “habeas corpus deadline of Jan[uary] 13, 2016.” Park’s state court direct appeal attorney even prepared a draft federal petition for him, but Park—in English—instructed him not to file it. Thus, Park’s level of English proficiency did not render him “unable, despite diligent efforts, to procure either legal materials in his own language or translation assistance from an inmate . . . or other source.” *Mendoza v. Carey*, 449 F.3d 1065, 1070 (9th Cir. 2006).

A later attorney’s abandonment of Park may have entitled him to some period of equitable tolling. *See Doe v. Busby*, 661 F.3d 1001, 1012 (9th Cir. 2011). But Park became aware of the abandonment in 2019. Even if the abandonment did entitle Park to some equitable tolling, this tolling could not stretch until 2023 because Park did not reasonably seek new counsel during the remaining three-year period until he filed his federal petition. *See id.* at 1013.

3. Park argues that he can overcome his failure to comply with the AEDPA statute of limitations because new evidence demonstrates that he is actually innocent. *See McQuiggin v. Perkins*, 569 U.S. 383, 392 (2013) (“[A] credible showing of actual innocence may allow a prisoner to pursue his constitutional

claims . . . on the merits notwithstanding the existence of a procedural bar to relief.”). Because this claim was not included in the COA and it does not “substantially overlap[]” with the AEDPA deadline and equitable tolling issues, we do not consider it. *See Gonzalez v. Wong*, 667 F.3d 965, 977 n.6 (9th Cir. 2011).

4. Because the record conclusively refutes Park’s claim that he is entitled to equitable tolling, we also conclude that the district court did not abuse its discretion in declining to grant him an evidentiary hearing. *See West v. Ryan*, 608 F.3d 477, 485 (9th Cir. 2010).

PETITION DENIED.