

AUG 26 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RANDY ERIC FULLER,

Petitioner - Appellant,

v.

T. FELKER, Warden,

Respondent - Appellee.

No. 07-56473

D.C. No. CV-07-00547-R

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Manuel L. Real, District Judge, Presiding

Submitted August 10, 2010**

Before: HAWKINS, McKEOWN, and IKUTA, Circuit Judges.

California state prisoner Randy Eric Fuller appeals from the district court's judgment dismissing his 28 U.S.C. § 2254 habeas petition as untimely. We have jurisdiction under 28 U.S.C. § 2253, and we affirm.

* 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).

Fuller contends that his federal petition was timely because he is entitled to equitable tolling due to a prison lockdown, which inhibited his access to the prison law library. This contention fails because Fuller's lack of access to the law library, per se, was not an extraordinary circumstance that might have caused the untimeliness of his petition. *See Ramirez v. Yates*, 571 F.3d 993, 997-98 (9th Cir. 2009).

In the alternative, Fuller contends that he is entitled to an evidentiary hearing. Fuller's reliance on *Whalem/Hunt v. Early*, 233 F.3d 1146 (9th Cir. 2000) (en banc) is unavailing because, unlike *Whalem/Hunt*, even if Fuller's allegations are true, equitable tolling would not be warranted.

AFFIRMED.