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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>NICHOLAS B. GARCIA,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>ROBERT K. WONG, Acting Warden of California State Prison - Solano,</p> <p>Respondent - Appellee.</p>

No. 09-15221

D.C. No. 2:07-cv-00621-ALA

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Arthur L. Alarcón, Senior Circuit Judge, Presiding

Submitted November 16, 2010**

Before: TASHIMA, BERZON, and CLIFTON, Circuit Judges.

California state prisoner Nicholas B. Garcia appeals from the district court’s judgment dismissing his 28 U.S.C. § 2254 habeas petition as untimely. We have

* 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).

jurisdiction under 28 U.S.C. § 2253,¹ and we affirm.

Garcia contends that he is entitled to equitable or statutory tolling because prison officials withheld his legal documents from him. Even assuming this alleged deprivation was an “extraordinary circumstance,” Garcia is not entitled to equitable tolling because he failed to demonstrate that this circumstance caused the untimely filing of his petition. *See Bryant v. Schriro*, 499 F.3d 1056, 1061 (9th Cir. 2007). Lack of causation also defeats his entitlement to statutory tolling. *Id.* at 1060.

Because the facts alleged by Garcia do not warrant equitable tolling, the district court also did not abuse its discretion in denying Garcia an evidentiary hearing. *See Tapia v. Roe*, 189 F.3d 1052, 1058 (9th Cir. 1999).

Garcia’s motion for change of venue upon remand is denied as moot.

AFFIRMED.

¹ After this court’s decision in *Hayward v. Marshall*, 603 F.3d 546 (9th Cir. 2010) (en banc), Garcia moved the court for issuance of a certificate of appealability on the issue of whether the district court properly dismissed his habeas petition as untimely. We grant Garcia’s motion and certify this issue for appeal. We also certify for appeal the issue of whether the district court abused its discretion by declining to hold an evidentiary hearing regarding Garcia’s entitlement to equitable tolling.