

DEC 19 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL HUMPHREY,

Petitioner - Appellant,

v.

KEN CLARK, Warden,

Respondent - Appellee.

No. 10-55248

D.C. No. 2:09-cv-04035-GAF-  
DTB

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Gary A. Feess, District Judge, Presiding

Argued and Submitted December 3, 2012  
Pasadena, California

Before: PREGERSON, PAEZ, and HURWITZ, Circuit Judges.

Petitioner-Appellant Michael Humphrey appeals the district court's denial of his 28 U.S.C. § 2254 habeas petition as untimely. We have jurisdiction under 28 U.S.C. §§ 1291 and 2253. Humphrey argues that he is entitled to equitable tolling of the one-year AEDPA statute of limitations on the basis of his limited mental

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

capacity. After the district court entered judgment in this case, we decided *Bills v. Clark*, 628 F.3d 1092 (9th Cir. 2010), which provides a framework for determining whether a habeas petitioner is entitled to equitable tolling of the statute of limitations on the basis of a mental impairment. Because the district court did not have the benefit of our decision in *Bills*, we vacate the judgment and remand to the district court for reconsideration under the *Bills* framework.

**VACATED and REMANDED.**