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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOHN GREEN,</p> <p>Petitioner - Appellant</p> <p>v.</p> <p>ANTHONY HEDGPETH, Warden</p> <p>Respondent - Appellee</p>

No. 11-17113

D.C. No. 4:10-cv-04136-CW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Claudia A. Wilken, District Judge, Presiding

Submitted May 15, 2012**

Before: CANBY, GRABER, and M. SMITH, Circuit Judges.

California state prisoner John Green appeals pro se 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).

Green contends he is entitled to equitable tolling because he did not have access to his legal files. Green has not demonstrated that an extraordinary circumstance beyond his control prevented him from timely filing his habeas petition, or that he has been pursuing his rights diligently. *See Holland v. Florida*, 130 S. Ct. 2549, 2562 (2010); *Chaffer v. Prosper*, 592 F.3d 1046, 1048 (9th Cir. 2010) (per curiam) (petitioner bears the “heavy burden” of showing that he diligently pursued his rights and that an extraordinary circumstance stood in his way).

We construe Green’s additional arguments as a motion to expand the certificate of appealability. So construed, the motion is denied. *See* 9th Cir. R. 22-1(e); *see also Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999) (per curiam).

AFFIRMED.