

DEC 04 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MANUEL PAREJO,

Petitioner-Appellant,

v.

SCOTT FRAKES,

Respondent-Appellee.

No. 11-35374

D.C. No. 3:10-cv-05764-RBL

MEMORANDUM\*

Appeal from the United States District Court  
for the Western District of Washington  
Benjamin H. Settle, District Judge, Presiding

Argued and Submitted November 6, 2012  
Seattle, Washington

Before: W. FLETCHER and FISHER, Circuit Judges, and DEARIE, District  
Judge.\*\*

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

\*\* The Honorable Raymond J. Dearie, United States District Judge for  
the Eastern District of New York, sitting by designation.

Appellant Manuel Parejo appeals the district court's order dismissing as time-barred his petition for a writ of habeas corpus under 28 U.S.C. § 2254.

Reviewing the order de novo, *Redd v. McGrath*, 343 F.3d 1077, 1080 (9th Cir. 2003), we hold that the petition was timely and reverse.

In determining that Parejo was aware of the “factual predicate” of his habeas claims as early as 1995, the district court misconstrued the applicable section of the habeas limitations statute, 28 U.S.C. § 2244(d)(1)(D). Under this court's decision in *Shelby v. Bartlett*, 391 F.3d 1061 (9th Cir. 2004), which was based on *Redd* and reaffirmed in *Mardesich v. Cate*, 668 F.3d 1164 (9th Cir. 2012), when, as here, a habeas petition challenges an administrative decision rather than the underlying judgment of conviction, the “factual predicate” under section 2244(d)(1)(D) triggering the one-year limitations period is ordinarily the administrative decision. *See Mardesich*, 668 F.3d at 1171-72; *Shelby*, 391 F.3d at 1062-66; *Redd*, 343 F.3d at 1081-85. We find no reason for departing from that framework here.

We further conclude that the administrative decision the petition challenges is the then-latest denial of parole, issued by the Indeterminate Sentence Review Board on December 27, 2007. Respondent conceded at oral argument and we now hold that so construed, the petition is timely under *Redd* and *Shelby*.

**REVERSED and REMANDED.**