

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 28 2015

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

SCOTT THOMAS McALPIN,

Petitioner - Appellant,

v.

M.D. McDONALD,

Respondent - Appellee.

No. 14-15181

D.C. No. 3:12-cv-06015-WHA

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
William Alsup, District Judge, Presiding

Submitted April 22, 2015 **

Before: GOODWIN, BYBEE, and CHRISTEN, Circuit Judges.

California state prisoner Scott Thomas McAlpin appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 habeas petition. We have jurisdiction under 28 U.S.C. § 2253. We review de novo the district court's decision that a § 2254 habeas petition is untimely, *see Bills v. Clark*, 628 F.3d

* 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).

1092, 1096 (9th Cir. 2010), as well as its denial of the claims on the merits, *see Stanley v. Cullen*, 633 F.3d 852, 859 (9th Cir. 2011). We affirm.

McAlpin does not challenge the district court's determination that his petition is time-barred. Upon review of the record, we agree with the district court's timeliness ruling. McAlpin is not entitled to sufficient statutory tolling under § 2244(d)(2) to render his petition timely. The record also does not disclose the existence of a mental impairment sufficient to warrant equitable tolling. *See Bills*, 628 F.3d at 1099-1101.

The district court also correctly concluded that, even if his petition were timely, McAlpin is not entitled to relief. The state court's rejection of McAlpin's claims regarding jury selection and jury instructions was not contrary to, nor an unreasonable application of, clearly established federal law, nor an unreasonable determination of the facts based on the evidence presented. *See* 28 U.S.C. § 2254(d); *J.E.B. v. Alabama*, 511 U.S. 127 (1994); *Estelle v. McGuire*, 502 U.S. 62, 72 (1991).

AFFIRMED.