

AUG 23 2016

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STEVE BADUE,

Petitioner-Appellant,

v.

JEFFREY A. BEARD,

Respondent-Appellee.

No. 15-16586

D.C. No. 2:13-cv-02368-WBS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
William B. Shubb, District Judge, Presiding

Submitted August 16, 2016**

Before: O'SCANNLAIN, LEAVY, and CLIFTON, Circuit Judges.

Former California state prisoner Steve Badue appeals pro se from the district court's judgment dismissing his 28 U.S.C. § 2254 habeas petition. We have jurisdiction under 28 U.S.C. § 2253. We review de novo a district court's

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2). Badue's motion for oral argument is, therefore, denied.

dismissal of a habeas petition as untimely, *see Brambles v. Duncan*, 412 F.3d 1066, 1069 (9th Cir. 2005), and we affirm.

Badue contends that his actual innocence excuses his untimely filing. This claim fails because Badue has not presented new, reliable evidence demonstrating that it is more likely than not that no reasonable juror would have found him guilty beyond a reasonable doubt. *See McQuiggin v. Perkins*, 133 S. Ct. 1924, 1928 (2013).

Appellee's request for judicial notice is granted.

We treat Badue's additional arguments as a motion to expand the certificate of appealability. So treated, the motion is denied. *See* 9th Cir. R. 22-1(e); *Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999).

AFFIRMED.