

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

NOV 15 2007

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

CHARLES CLINTON ROLAND,

Petitioner - Appellant,

v.

A. K. SCRIBNER, Warden,

Respondent - Appellee.

No. 06-16443

D.C. No. CV-04-04623-MJJ

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
Martin J. Jenkins, District Judge, Presiding

Argued and Submitted November 5, 2007  
San Francisco, California

Before: KLEINFELD, SILVERMAN, and W. FLETCHER, Circuit Judges.

Roland's petition was time barred. The judgment he challenges was final  
January 17, 1999. Thus the one year statute of limitations under 28 U.S.C.

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

§ 2244(d)(1) barred his claim January 17, 2000, unless tolled. During that year, Roland had not yet filed anything in state court to exhaust his post conviction remedies there.

Roland's theory is that until January 2003, he did not know – and could not have known – that the two people he stabbed inside the house had pending charges against them. For the sake of argument, we assume that to be true. Even so, that newly-discovered factual predicate would have given Roland until January 2004 to file for state post-conviction relief. 28 U.S.C. § 2244(d)(1)(D). However, he did not file his state habeas petition until February 13, 2004. There is no basis in the record that would establish tolling to that date.

AFFIRMED.