

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 06 2008

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

MILTONOUS KINGDOM,

Petitioner - Appellant,

v.

A. A. LAMARQUE, Warden; et al.,

Respondents - Appellees.

No. 07-15549

D.C. No. CV-04-02342-PJH

MEMORANDUM*

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

Submitted February 26, 2008**

Before: BEEZER, FERNANDEZ and McKEOWN, Circuit Judges.

California prisoner Miltonous Kingdom appeals from the district court's judgment dismissing as untimely his 28 U.S.C. § 2254 petition. We have

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

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

jurisdiction under 28 U.S.C. §§ 1291 and 2253. We review de novo, *Brambles v. Duncan*, 412 F.3d 1066, 1069 (9th Cir. 2005), and we affirm.

Kingdom contends that he is entitled to equitable tolling because his attorney's misconduct in failing to file a timely petition constituted extraordinary circumstances beyond his control. This contention fails because ordinary attorney negligence does not constitute an extraordinary circumstance sufficient to warrant equitable tolling. *See Frye v. Hickman*, 273 F.3d 1144, 1146 (9th Cir. 2001); *cf. Spitsyn v. Moore*, 345 F.3d 796, 800-802 (9th Cir. 2003). Furthermore, we agree with the district court that the record reflects that Kingdom did not pursue his rights diligently. *See Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005).

AFFIRMED.