

APR 25 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANTHONY BRYANT TILLMAN,

Petitioner - Appellant,

v.

SUE HUBBARD, Warden,

Respondent - Appellee.

No. 07-15944

D.C. No. CV-06-00008-DFL

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
David F. Levi, District Judge, Presiding

Submitted April 14, 2008**
San Francisco, California

Before: SCHROEDER, NOONAN and CALLAHAN, Circuit Judges.

Petitioner-appellant Anthony Bryant Tillman appeals the district court's order declaring that, because the Ninth Circuit denied Tillman permission to file a successive federal habeas corpus petition for his failure to meet the filing

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

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

requirements of the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), no valid habeas corpus petition was before the district court, and the state’s motion to dismiss was moot. Appellant argues that applying AEDPA’s filing requirements to his successive federal petition for a writ of habeas corpus is impermissibly retroactive, because he filed his initial federal petition prior to AEDPA’s enactment. In *United States v. Villa-Gonzalez*, 208 F.3d 1160 (9th Cir. 2000), this court held specifically that such an application of AEDPA’s filing requirements was *not* impermissibly retroactive. This court declined Appellant’s petition for initial en banc consideration, and a three-judge panel may not overrule existing precedent. See *United States v. Rodriguez-Lara*, 421 F.3d 932, 943 (9th Cir. 2005). Therefore the district court’s order must be **AFFIRMED**.