

SEP 15 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALAMIN SAMAD, a.k.a. Eddie Dunbar,

Petitioner - Appellant,

v.

D.G. ADAMS,* Warden, California State
Prison, Corcoran; ATTORNEY
GENERAL FOR THE STATE OF
CALIFORNIA,

Respondents - Appellees.

No. 06-15197

D.C. No. CV-04-01176-GEB

MEMORANDUM**

Appeal from the United States District Court
for the Eastern District of California
Garland E. Burrell, Chief District Judge, Presiding

Argued and Submitted March 10, 2008
San Francisco, California

Before: HUG, RYMER, and RAWLINSON, Circuit Judges.

* D.G. Adams, Warden of California State Prison, Corcoran, is substituted for his predecessor. Fed. R. App. P. 43(c)(2).

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

Appellant Alamin Samad (Samad) challenges the district court’s dismissal of his petition for writ of habeas corpus as time-barred, arguing that, pursuant to *Carey v. Saffold*, 536 U.S. 214 (2002), the federal statute of limitations was statutorily tolled while he sought collateral review in the state courts of California.

Assuming that the mailbox rule applies, Samad’s contentions still lack merit. Samad’s petition filed on November 7, 2002, was denied by the California Superior Court as “successive” and “untimely.” Therefore, his petition was not “properly filed” and did not toll the federal statute of limitations. *See Pace v. DiGuglielmo*, 544 U.S. 408, 417 (2005). Consequently, Samad’s federal petition filed on June 21, 2004, was untimely.¹

Our recent decision in *Harris v. Carter*, 515 F.3d 1051, 1057 (9th Cir. 2008), applying equitable tolling where the Petitioner relied on our pre-*Pace* precedent to determine when to file his federal petition, does not alter our holding in this case. In *Harris*, the Petitioner expressly argued his reliance on our precedent. *Id.* at 1052. No similar argument was made by Samad.

We decline to address the uncertified issues in this case because Samad has not satisfied his burden of showing “that jurists of reason would find it debatable

¹ Because the untimeliness of the petition filed in November, 2002, renders statutory tolling unavailable, we need not address Samad’s subsequent state court petitions.

whether the petition states a valid claim of the denial of a constitutional right . . .”

Slack v. McDaniel, 529 U.S. 473, 484 (2000).

AFFIRMED.