

DEC 30 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AL GENE FISHER, Jr.,

Petitioner - Appellant,

v.

FELKER,

Respondent - Appellee.

No. 06-55651

D.C. No. CV-05-07936-R

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Manuel L. Real, District Judge, Presiding

Submitted December 17, 2008\*\*

Before: GOODWIN, WALLACE and RYMER, Circuit Judges.

California state prisoner Al Gene Fisher, Jr. appeals from the district court's judgment dismissing his 28 U.S.C. § 2254 petition as time-barred. We have

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\* 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 pursuant to 28 U.S.C. § 2253, and we affirm.

Fisher contends that he is entitled to equitable tolling of the statute of limitations because he had inadequate access to the prison law library during prison lockdowns and because he had periods of mental illness. We conclude that Fisher is not entitled to equitable tolling because he has not demonstrated that an extraordinary circumstance stood in his way and prevented timely filing. *See Lawrence v. Florida*, 127 S. Ct. 1079, 1085 (2007).

We deny Fisher's request for an evidentiary hearing because, even if his allegations are true, he is not entitled to equitable tolling. *See Roy v. Lampert*, 465 F.3d 964, 969 (9th Cir. 2006).

We deny Fisher's request for appointment of counsel.

**AFFIRMED.**