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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ERIC JON WICK, Petitioner - Appellant, v. K. PROSPER, Respondent - Appellee.	No. 07-15564 D.C. No. CV-06-00282-MCE MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Morrison C. England, District Judge, Presiding

Submitted February 18, 2009**

Before: BEEZER, FERNANDEZ, and W. FLETCHER, Circuit Judges.

Eric Jon Wick, a California state prisoner, appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 petition. We have jurisdiction under 28 U.S.C. § 2253, and we affirm.

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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).

DAT/Research

Wick contends that the district court erred by dismissing his petition as untimely pursuant to the one-year limitations period set forth by 28 U.S.C. § 2244(d)(1), because he was entitled to statutory or equitable tolling. He asserts that his right to tolling was triggered because he was seeking to exhaust his state administrative remedies, and the state courts delayed in notifying him of the denial of his initial superior court habeas petition. These contentions lack merit. Statutory tolling does not apply during the exhaustion of prison disciplinary appeals, and Wick has not shown the requisite diligence in pursuing his habeas claims to establish he is entitled to equitable tolling. *See Redd v. McGrath*, 343 F.3d 1077, 1082 (9th Cir. 2003); *see also Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005).

AFFIRMED.