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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANTHONY ARTEAGA, Petitioner - Appellant, v. A. K. SCRIBNER, Respondent - Appellee.	No. 06-56151 D.C. No. CV-05-02781-RSWL MEMORANDUM[*]

Appeal from the United States District Court
for the Central District of California
Ronald S.W. Lew, District Judge, Presiding

Submitted September 14, 2009[**]

Before: SILVERMAN, RAWLINSON, and CLIFTON, Circuit Judges.

California state prisoner Anthony Arteaga appeals from the district court's dismissal of his 28 U.S.C. § 2254 habeas corpus petition as untimely. We have jurisdiction pursuant to 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).

EH/Research

Arteaga contends that his petition is timely pursuant to 28 U.S.C. § 2244(d)(1)(D) because he did not discover the factual predicate of his claim until five years after his state court conviction became final. The record reflects that with the exercise of due diligence, Arteaga could have discovered the factual predicate in a timely manner. *Cf. Hasan v. Galaza*, 254 F.3d 1150, 1154-55 (9th Cir. 2001).

We construe Arteaga's briefing of uncertified issues as a motion to expand the certificate of appealability, and we deny the motion. *See* 9th Cir. R. 22-1(e); *Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999) (per curiam).

AFFIRMED.