

23 Fed.Appx. 847

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Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Ninth Circuit Rule 36-3. (Find CTA9 Rule 36-3)

United States Court of Appeals,
Ninth Circuit.

Oliver THOMAS, Jr., Petitioner-Appellant,

v.

Ernest C. ROE, Warden; et al., Respondents-Appellees.

No. 00-55783. D.C. No. CV-98-04861-GHK-AN. Submitted Dec. 17, 2001^{*}. Decided Dec. 27, 2001.

Appeal from the United States District Court for the Central District of California George H. King, District Judge, Presiding.

Before [SCHROEDER](#), Chief Judge, [TROTT](#) And [PAEZ](#), Circuit Judges.

Opinion

MEMORANDUM^{**}

^{*1} California state prisoner Oliver Thomas, Jr. appeals the district court's denial of his [Fed.R.Civ.P. 60\(b\)](#) motion for relief from the judgment dismissing his [28 U.S.C. § 2254](#) habeas petition as untimely. We have jurisdiction pursuant to [28 U.S.C. § 1291](#), review for abuse of discretion, *see* [Greenawalt v. Stewart](#), 105 F.3d 1268, 1273 (9th Cir.1997), and reverse and remand.

As the government concedes, under [Artuz v. Bennett](#), 531 U.S. 4, 121 S.Ct. 361, 148 L.Ed.2d 213 (2000) and [Dictado v. Ducharme](#), 244 F.3d 724 (9th Cir.2001), Thomas's state petition filed on January 16, 1998, was properly filed for purposes of tolling under section 2244(d)(2). Accordingly, Thomas's [section 2254](#) petition is timely.

REVERSED and REMANDED.

Parallel Citations

2001 WL 1665133 (C.A.9 (Cal.))

Footnotes

- ^{*} This panel unanimously finds this case suitable for decision without oral argument. *See* [Fed. R.App. P. 34\(a\)\(2\)](#).
- ^{**} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by [Ninth Circuit Rule 36-3](#).

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