

23 Fed.Appx. 847

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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<sup>\*</sup>. 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<sup>\*\*</sup>

<sup>\*1</sup> 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

- <sup>\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* [Fed. R.App. P. 34\(a\)\(2\)](#).
- <sup>\*\*</sup> 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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