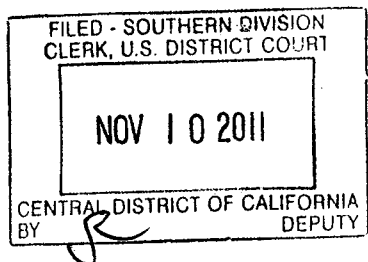


I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY FIRST CLASS MAIL POSTAGE PREPAID, TO ALL COUNSEL *Petitioner* (OR PARTIES) AT THEIR RESPECTIVE MOST RECENT ADDRESS OF RECORD IN THIS ACTION ON THIS DATE.

DATED: 11-10-11
[Signature]
DEPUTY CLERK



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PETER FUGAWA,) Case No. CV 11-6414-JSL (JPR)
)
) Petitioner,) ORDER ACCEPTING FINDINGS AND
) RECOMMENDATIONS OF U.S.
) vs.) MAGISTRATE JUDGE AND DENYING
) PETITIONER'S PENDING MOTIONS
)
) ROBERT TRIMBLE, Warden,)
)
) Respondent.)

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, all the records and files herein, and the Report and Recommendation of the U.S. Magistrate Judge.

Petitioner has filed objections to the Report and Recommendation, to which he has attached numerous exhibits, some of which were not previously part of the record. Shortly before and since the Report and Recommendation was issued, he has also submitted numerous other pleadings. Some of these, including an Application for Evidentiary Hearing, an Application to Expand the Record, an Application for Certificate of Appealability, a Request for Leave to Conduct Discovery, and a Request to Hold in Abeyance Habeas Corpus Pending the Exhaustion of State Remedies,

1 were filed by the Court. Others, including a Supplemental Writ
2 and a First Amended Petition, were rejected because Petitioner
3 did not seek leave of Court to file them. Still others were
4 rejected because they duplicated some of the already-pending
5 motions listed above.

6 Having made a de novo determination of those portions of the
7 Report and Recommendation to which objections have been made, and
8 having considered all of the new pleadings and evidence
9 Petitioner has submitted, the Court accepts the findings and
10 recommendations of the Magistrate Judge.

11 IT THEREFORE IS ORDERED that:

12 1. Petitioner's request for an evidentiary hearing is
13 denied. Petitioner's newly submitted evidence all relates to
14 whether he can show equitable tolling for the 11-year period
15 after the statute of limitations had run for filing a federal
16 habeas petition, which Petitioner does not dispute was January
17 2000. Even if the Court accepts as true all of Petitioner's new
18 evidence and his claims concerning what he would demonstrate in
19 an evidentiary hearing - that his attorney cheated his parents
20 out of fees, misleadingly told him that he could not file any
21 further federal habeas petitions, held onto the transcripts of
22 Petitioner's trial until Petitioner asked for them back in 2011
23 and lied by asserting that he had originally returned them to
24 Petitioner in 1999, and tried to intimidate Petitioner's deputy-
25 sheriff brother after Petitioner filed a malpractice lawsuit

1 against the lawyer¹ - he still cannot show any extraordinary
2 circumstance preventing him from filing a federal habeas petition
3 or that he was diligent in pursuing his rights during that 11-
4 year period. See Frye v. Hickman, 273 F.3d 1144, 1146 (9th Cir.
5 2001) (refusing to apply equitable tolling because Petitioner was
6 not diligent and because negligence of habeas counsel generally
7 cannot equitably toll statute); Culver v. Dir. of Corrs., 450 F.
8 Supp. 2d 1137, 1142 (C.D. Cal. 2006) (same). Petitioner has not
9 submitted any evidence that at any time between 2002 and 2011 he
10 tried to get in touch with his former lawyer or anyone else
11 concerning pursuing remedies in the Court. He has not even
12 alleged that at any time between 2002 and 2011 he asked his
13 former lawyer for his transcripts back and was refused.²
14 Accordingly, an evidentiary hearing is not warranted. See Porter
15 v. Horel, No. 09-15871, 2011 WL 5100908, at *1 (9th Cir. Oct. 27,
16 2011) (rejecting request for evidentiary hearing when no attorney
17 misconduct alleged in record could have sufficiently tolled
18 statute).

19 2. For the same reasons, Petitioner's Request for Leave to
20 Conduct Discovery is denied. Even if the Court accepts as true
21 all of Petitioner's claims concerning his counsel, he cannot
22 demonstrate that he faced an extraordinary circumstance or that
23 he was diligent.

24 _____
25 ¹Of course, much of Petitioner's own evidence refutes these
26 claims. See, e.g., OSC Resp. ex. 4 (telling Petitioner there are
"several steps up the ladder" for federal habeas petitions).

27 ²During this entire period Petitioner apparently had many or
28 all of the files concerning his trial except the transcripts. (OSC
Resp. at 3.)

1 3. Petitioner's Request to Expand the Record is denied as
2 moot because all of the documents Petitioner seeks to include in
3 the record are already part of it and have been considered by the
4 Court. Attorney Gailen's July 27, 1998 letter to Petitioner was
5 attached to Petitioner's Request for Leave to Conduct Discovery;
6 Gailen's August 25, 1998 letter to Petitioner was attached to the
7 discovery request; Gailen's May 5, 1999 letter to Petitioner was
8 attached to the discovery request; Gailen's July 9, 1999 letter
9 to Petitioner was attached to Petitioner's response to the
10 Court's Order to Show Cause; Gailen's August 13, 1999 letter to
11 Petitioner was attached to the OSC response; Gailen's November 3,
12 2000 letter to Petitioner's brother was attached to the OSC
13 response; Gailen's November 26, 2000 letter to Petitioner was
14 attached to the discovery request; Gailen's March 7, 2002 letter
15 to Petitioner was attached to the OSC response; Gailen's May 5,
16 2011 letter to Petitioner was attached to the OSC response; and
17 Gailen's May 31, 2011 letter to Petitioner was attached to the
18 OSC response.

19 4. Petitioner's Request to Hold in Abeyance Habeas Corpus
20 Petition Pending the Exhaustion of State Remedies is denied for
21 two reasons. First, the currently pending Petition appears to
22 contain no unexhausted claims. Second, as the Court finds
23 herein, the statute of limitations long ago ran on any claim
24 Petitioner might raise.

25 5. Judgment be entered denying the Petition and dismissing
26 this action with prejudice.

27 DATED: W/9/11

Spencer Letts

J. SPENCER LETTS
UNITED STATES DISTRICT JUDGE