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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JEFFREY HOUT,

Petitioner-Appellant,

v.

EARL HOUSER, State of Alaska  
Department of Corrections Superintendent  
III,

Respondent-Appellee.

No. 21-35381

D.C. No. 4:21-cv-00004-JKS

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Alaska  
James K. Singleton, Jr., District Judge, Presiding

Argued and Submitted November 7, 2022  
Seattle, Washington

Before: IKUTA and COLLINS, Circuit Judges, and FITZWATER,\*\* District  
Judge.

Jeffrey Hout appeals the district court's dismissal of his petition for a writ of  
habeas corpus without expressly considering his request to stay and hold his

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by Ninth Circuit Rule 36-3.

\*\* The Honorable Sidney A. Fitzwater, United States District Judge for  
the Northern District of Texas, sitting by designation.

petition in abeyance. We have jurisdiction under 28 U.S.C. § 2253(c), *see Washington v. Cambra*, 208 F.3d 832, 833 (9th Cir. 2000), and we review for abuse of discretion, *see Dixon v. Baker*, 847 F.3d 714, 718 (9th Cir. 2017). We affirm the district court.

Hout filed a timely petition for state post-conviction relief before his conviction became final on direct review, and it is undisputed that his state application for post-conviction relief remains pending in Alaska state court. *See Valdez v. Montgomery*, 918 F.3d 687, 690 (9th Cir. 2019). The Antiterrorism and Effective Death Penalty Act’s one-year statute of limitations for filing a federal habeas petition, *see* 28 U.S.C § 2244(d)(1), is tolled during the pendency of properly filed state post-conviction proceedings, *see* 28 U.S.C § 2244(d)(2); *see also Tillema v. Long*, 253 F.3d 494, 502 (9th Cir. 2001), *as amended on denial of reh’g and reh’g en banc* (Aug. 3, 2001); *Campbell v. Henry*, 614 F.3d 1056, 1061–62 (9th Cir. 2010). Thus, the statute of limitations is tolled as to all of Hout’s claims in his federal habeas petition, whether his claims are exhausted or unexhausted. *See Gaston v. Palmer*, 417 F.3d 1030, 1040 (9th Cir. 2005) (explaining that while “[e]xhaustion is determined on a claim-by-claim basis,” the “relevant question for § 2244(d)(2) tolling purposes is whether a properly filed application is pending in state court, and not whether any particular claim was

contained in that application”), *reh'g granted, opinion modified*, 447 F.3d 1165 (9th Cir. 2006) (internal citations omitted).

When his state proceedings conclude, Hout will have the full one-year limitations period to refile his federal habeas petition containing only exhausted claims. Therefore, the district court did not abuse its discretion in dismissing Hout’s mixed habeas petition without considering his request to stay the petition and hold it in abeyance while he exhausted his unexhausted claims. Further, any error would be harmless because Hout will have the full one-year limitations period to bring his federal habeas petition regardless whether a stay is granted.

**AFFIRMED.**