

1 was filed, the trial court dismissed the post-conviction relief proceeding.

2 Petitioner filed a direct appeal on December 8, 2006, raising one issue for
3 review—whether he was denied a fair and impartial trial in violation of the due process
4 clauses of the Arizona and United States Constitutions based on the absence of a Bulgarian
5 language interpreter to assist him during trial. On July 17, 2007, the Arizona Court of
6 Appeals affirmed the trial court’s decision not to appoint an interpreter. Petitioner did not
7 seek further review of that decision in the Arizona Supreme Court.

8 The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) provides that
9 “[a] 1-year period of limitation shall apply to an application for a writ of habeas corpus by
10 a person in custody pursuant to the judgment of a State court.” 28 U.S.C. § 2244(d)(1). The
11 statute of limitations runs from “the date on which the judgment became final by the
12 conclusion of direct review or the expiration of the time for seeking such review.” *Id.* §
13 2244(d)(1)(A).

14 The Arizona Court of Appeals affirmed petitioner’s conviction and sentence on July
15 17, 2007. Petitioner then had 30 days to file a petition for review with the Arizona Supreme
16 Court. Ariz. R. Crim. P. 31.19(a). Because he did not file a petition for review, his
17 conviction became final upon the expiration of the 30-day period on August 16, 2007. Under
18 AEDPA, petitioner then had one year from August 16, 2007, to file his petition for habeas
19 relief. Nevertheless, he waited until August 19, 2009, to file his petition—more than a year
20 after the limitations period had expired. Petitioner concedes that his petition is untimely
21 under AEDPA. He argues, however, that the limitations period should be equitably tolled
22 because he was deprived of access to his court files and because his lawyer failed to perform
23 his duty.

24 AEDPA’s statute of limitations is not jurisdictional and may be tolled for equitable
25 reasons. *Holland v. Florida*, 130 S. Ct. 2549, 2560 (2010). However, a petitioner is entitled
26 to equitable tolling only if he shows “(1) that he has been pursuing his rights diligently, and
27 (2) that some extraordinary circumstance stood in his way.” *Id.* at 2562 (citing *Pace v.*
28 *DiGuglielmo*, 544 U.S. 408, 418, 125 S. Ct. 1807, 1814 (2005)). “[T]he circumstances of

