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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BRIAN NELSON EDWARDS,)
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 Petitioner,)
)
 vs.)
)
 PATTON STATE HOSPITAL, ET AL.,)
)
 Respondents.)
)
 _____)

CASE NO. CV 10-04985 GAF (RZ)

ORDER –
1. TO SHOW CAUSE RE
DISMISSAL FOR
UNTIMELINESS; and
2. DENYING REQUESTS FOR
RELEASE AND
APPOINTMENT OF COUNSEL

The Court issues this Order To Show Cause directed to Petitioner because the face of the petition suggests that the action may be time-barred. The Court also denies Petitioner’s requests for (a) own-recognizance release pending resolution of the petition and (b) appointment of counsel.

In 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act (“AEDPA”), a portion of which established a one-year statute of limitations for bringing a habeas corpus petition in federal court. 28 U.S.C. § 2244(d). In most cases, the limitations period commences on the date a petitioner’s conviction became final. See 28 U.S.C. § 2244(d)(1). The limitations period will start instead on one of the following dates, whichever is latest, if any of them falls after the petitioner’s conviction becomes final: the date on which a State-created impediment – itself a violation of Constitutional law – was

1 removed; the date on which a newly-recognized Constitutional right was established; or
2 the date on which the factual predicate for the claims could have been discovered through
3 the exercise of due diligence. 28 U.S.C. § 2244(d)(1).

4 The time spent in state court pursuing collateral relief in a timely manner is
5 excluded, *see* 28 U.S.C. § 2244(d)(2), and the statute also is subject to equitable tolling.
6 *Holland v. Florida*, No. 09-5327, ___ U.S. ___, ___ S.Ct. ___, ___ L.Ed.2d ___, 2010 WL
7 2346549 (June 14, 2010)).

8 The current petition was filed on July 7, 2010. Petitioner challenges his
9 original conviction (or probation-violation determination) in 1997 or otherwise late in the
10 1990s. He does not appear to challenge later legal setbacks, such as his commitment(s) as
11 an involuntary mental patient. From the face of the petition and from judicially-noticeable
12 materials, the Court discerns as follows:

- 13 (a) On December 4, 1997 in Los Angeles County Superior Court, Petitioner
14 entered a no-contest plea to a charge of burglarizing the home of his ex-
15 girlfriend, Tasha Salters, and her family. The plea was part of a deal with
16 prosecutors, who agreed in turn to dismiss other pending charges of making
17 terrorist threats and assault with a deadly weapon. The trial court sentenced
18 Edwards to five years of probation, with the proviso that he would be
19 sentenced to six years in prison if he violated probation. Edwards violated his
20 probation; the trial court sentenced him to six years in prison. *See* Pet. ¶ 2;
21 *People v. Edwards*, No. B168792, 2004 WL 504639 (Cal.App.2d Dist.).
- 22 (b) Petitioner appealed, but the California Court of Appeal affirmed on
23 August 31, 2000. The California Supreme Court denied his petition for
24 further direct review on December 13, 2000.
- 25 (c) Petitioner had 90 days thereafter to seek *certiorari* in the United States
26 Supreme Court. *See* SUP. CT. R. 13.1. He did not do so. His conviction
27 therefore became final after March 13, 2001.

- 1 (d) Almost two months passed. On May 10, 2001, Petitioner filed a habeas
2 petition in the California Court of Appeal, which rejected relief seven days
3 later. *See Edwards v. The People*, No. B149948 (Cal.App.2d Dist. 2001). He
4 tried a similar petition there on July 24, 2001, only to be rebuffed two days
5 later. *See Edwards v. The People*, No. B151755 (Cal.App.2d Dist. 2001). On
6 August 24, 2001, he sought habeas relief in the California Supreme Court,
7 which rejected the petition on February 2, 2002. *In re Edwards*, No. S100216
8 (Cal. Supreme Ct. 2002). The California Supreme Court rejected his second
9 and final habeas petition in that court on July 30, 2003. *In re Edwards*, No.
10 S114321 (Cal. Supreme Ct. 2003). (This Court is unable to search the *trial*
11 court records for habeas petitions therein. It is possible that Petitioner
12 pursued trial-court relief on one or more occasions, but the Court doubts that
13 he did so in a sufficiently extraordinary manner as to render this action
14 timely.)
- 15 (e) In 2001, 2002 and 2003, Petitioner filed habeas petitions in this Court. All
16 were summarily dismissed, albeit not on the merits. In each instance,
17 Petitioner appeared to wish to challenge his initial conviction, asserting that
18 his actions arose from being gradually poisoned by his ex-girlfriend (and
19 burglary victim), Tasha Salters. *See Edwards v. Salters*, No. CV 00-8623
20 GAF (RZ) (dismissed Sept. 13, 2000); *Edwards v. Salters, et al.*, No. CV 02-
21 07173 DDP (RZ) (dismissed Nov. 5, 2002); *Edwards v. California*, No. CV
22 03-5866 GAF (RZ) (dismissed Sept. 3, 2003).
- 23 (f) In 2003 or 2004, Petitioner was adjudicated as a “mentally disordered
24 offender” (MDO) pursuant to CAL. PENAL CODE § 2962 *et seq.* and thus left
25 the state *prison* system for the involuntary care of the state *mental health*
26 system, where he remains. The California Court of Appeal affirmed that
27 judgment on direct review, *People v. Edwards, supra*, No. B168792, 2004
28 WL 504639 (Cal.App.2d Dist. March 16, 2004) (supplying substantial factual

1 background) and, at the same time, rejected habeas relief in two petitions
2 Petitioner filed with that court in 2003 which were consolidated with the
3 appeal. *See Edwards v. The People*, No. B168929 (Cal. Ct. App. 2d Dist.)
4 (filed July 29, 2003 and consolidated on Aug. 7); *Isaacs* [Petitioner's mother
5 Janice, on Petitioner's behalf] *v. The People*, No. B171752 (Cal. Ct. App.)
6 (filed Dec. 10, 2003 and consolidated on Dec. 23). As before, this Court
7 cannot tell whether Petitioner also pursued habeas relief in the trial court.

8 (g) Between October 2004 and March 2010, Petitioner peppered the state
9 appellate court with the following eight further habeas petitions, all of which
10 were rejected within a few days to a few months: *Edwards v. The People*, No.
11 B178399 (Cal. Ct. App. 2d Dist. 2004) (rejected on 15th day); *Edwards v. The*
12 *People*, No. B200154 (Cal. Ct. App. 2d Dist. 2007) (rejected on 20th day);
13 *Edwards v. The People*, No. B208277 (Cal. Ct. App. 2d Dist. 2008) (rejected
14 on 67th day); *Edwards v. The People*, No. B218155 (Cal. Ct. App. 2d Dist.
15 2009) (rejected on 170th day); *In re Edwards*, No. B220506 (Cal. Ct. App. 2d
16 Dist. 2009) (rejected on 35th day) (filed after, and rejected sooner than,
17 immediately preceding case); *In re Edwards*, No. B221169 (Cal. Ct. App. 2d
18 Dist. 2010) (rejected on 38th day); and *In re Edwards*, No. B223104 (Cal. Ct.
19 App. 2d Dist. 2010) (rejected on 13th day).

20 * * * * *

21 Unless this Court has miscalculated the limitations period, or some form of
22 additional tolling applies in sufficient measure, this action is time-barred. Petitioner
23 allowed nearly two months of his twelve-month AEDPA limitations period to run before
24 filing a habeas petition in May 2001, tolling the statute. Even if the Court assumes,
25 perhaps with undue generosity, that Petitioner thereafter enjoyed tolling until March 16,
26 2004, when the California Court of Appeal affirmed the MDO judgment and rejected two
27 habeas petitions, then his one-year limitations period still expired ten months later, in
28 January of 2005.

1 No basis appears in the petition for a later AEDPA-limitations-period starting
2 date. Nor does the face of the petition disclose any basis for equitable tolling. *See Holland*
3 *v. Florida, supra*, 2010 WL 2346549 at *12 (equitable tolling of AEDPA statute requires
4 petitioner to show (1) that he has been pursuing his rights diligently, and (2) that some
5 extraordinary circumstance stood in his way). On the contrary, it appears Petitioner was
6 aware of his alleged poisoning, of his attorney’s or attorneys’ shortcomings, and of efforts
7 to conceal evidence of the poisoning, either at trial or within a few years thereafter. The
8 nature of his claims here may be distilled as, “My ex-girlfriend poisoned me back then,
9 excusing my conduct, and my lawyer(s) conspired with others to cover up the poisoning.”
10 To whatever extent Petitioner may have any cognizable federal claims, he waited too long
11 to bring them to the California Supreme Court and this Court.

12 This Court may raise *sua sponte* the question of the statute of limitations bar,
13 so long as it gives Petitioner an opportunity to be heard on the matter. *Herbst v. Cook*, 260
14 F.3d 1039 (9th Cir. 2001). Accordingly, Petitioner shall show cause in writing why this
15 action should not be dismissed as being barred by the one-year statute of limitations.
16 Petitioner shall file his response to the Court’s Order to Show Cause not later than 21 days
17 from the filing date of this Order. *Petitioner shall not resubmit exhibits or other materials*
18 *already included in (or appended to) his Petition.*

19 If Petitioner does not file a response within the time allowed, the action may
20 be dismissed for failure to timely file, and for failure to prosecute.

21 Finally, the Court DENIES Petitioner’s conclusory requests, filed with the
22 Petition, for (a) release on his own recognizance pending resolution of the petition, and
23 (b) appointment of counsel. There are no grounds here for a release. In addition, the Sixth
24 Amendment right to counsel does not apply in habeas corpus actions. Indigent state
25 prisoners who apply for habeas relief are not entitled to appointment of counsel unless it
26 is determined “that the interests of justice so require.” 18 U.S.C. § 3006A(a)(3); 28 U.S.C.

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1 § 2254(h). Petitioner's case presents no exceptional circumstances requiring appointment
2 of counsel.

3 IT IS SO ORDERED.

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5 DATED: July 21, 2010

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9 RALPH ZAREFSKY
10 UNITED STATES MAGISTRATE JUDGE
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