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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

WINSTON WILLIAMS,)	CASE NO. CV 12-01386 R (RZ)
)	
Petitioner,)	
)	ORDER TO SHOW CAUSE RE
vs.)	UNTIMELINESS
)	
M. MARTEL, Warden,)	
)	
Respondent.)	

The Court issues this Order To Show Cause directed to Plaintiff because this habeas corpus action may be time-barred.

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

1 The time spent in state court pursuing collateral relief in a timely manner is
2 excluded, *see* 28 U.S.C. § 2244(d)(2), and the courts have held that the statute also is
3 subject to equitable tolling. *See Holland v. Florida*, 560 U.S. ___, 130 S. Ct. 2549, 2560,
4 2562-63, 177 L. Ed. 2d 130 (2010).

5 From the face of the petition and from judicially-noticeable materials, the
6 Court discerns that –

- 7 (a) In 1998, a Los Angeles County Superior Court jury convicted Petitioner of
8 kidnapping and robbery. He was sentenced to prison for 18 years and four months
9 to life. Pet. ¶ 2.
- 10 (b) The Court of Appeal affirmed in October 1999. That court also reversed in part,
11 according to the docket, but whatever aspects were reversed still left in place the
12 convictions that Petitioner now challenges. *See* docket in *People v. Williams and*
13 *Cooper*, No. B124929, Cal. Ct. App. 2d Dist. 1999, *available at*
14 [http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=2&doc_id=1](http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=2&doc_id=1063474&doc_no=B124929)
15 [063474&doc_no=B124929](http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=2&doc_id=1063474&doc_no=B124929). The California Supreme Court denied further direct
16 review on February 16, 2000. *Id.* (Cal. Supreme Ct. case no. S084002). Petitioner
17 omits this direct-appeal information from the 1AP.
- 18 (c) Petitioner apparently did not seek *certiorari* in the United States Supreme Court.
19 Petitioner’s conviction therefore became final no later than May 17, 2000, when the
20 high court’s 90-day period for seeking such relief expired. *See* SUP. CT. R. 13.1.
- 21 (d) On July 18, 2000, Petitioner filed a habeas corpus petition in this Court, *Williams*
22 *v. Castro*, No. CV 00-7750 R (RZ). The Court entered Judgment dismissing the
23 action without prejudice on July 23, 2001 for Petitioner’s failure to have exhausted
24 his claims in state court prior to filing suit.
- 25 (e) Petitioner then returned to the state courts. Starting on August 6, 2001 and
26 continuing for over a decade thereafter, Petitioner has filed numerous unsuccessful
27 petitions in the California Supreme Court and California Court of Appeal seeking
28

1 habeas corpus or coram nobis. In chronological order, these actions, all captioned
2 *In re Williams*, include the following:

- 3 ● Cal. Supreme Ct. no. S099628 (habeas relief denied Nov. 28, 2001);
- 4 ● Cal. Ct. App. no. B166904 (coram nobis relief denied May 13, 2003);
- 5 ● Cal. Supreme Ct. no. S110897 (habeas relief denied June 6, 2003);
- 6 ● Cal. Ct. App. no. B224277 (habeas relief denied May 27, 2010);
- 7 ● Cal. Ct. App. no. B233101 (habeas relief denied May 26, 2011); and
- 8 ● Cal. Supreme Ct. no S194766 (habeas relief denied Jan. 11, 2012).

9 (f) Petitioner filed this action on February 13, 2012.

10 * * * * *

11 Unless this Court has miscalculated the limitations period, or some form of
12 additional tolling applies in sufficient measure, this action is time-barred. It became stale
13 over ten years ago, in mid-May of 2001, twelve months after his conviction became final.
14 Petitioner's prior, abortive *federal*-court petition did not toll the applicable one-year
15 limitations period, unlike a properly-filed *state*-court habeas challenge. 28 U.S.C.
16 § 2244(d)(2); *Duncan v. Walker*, 533 U.S. 167, 181-82, 121 S. Ct. 2120, 150 L. Ed. 2d 251
17 (2001). And Petitioner's commencement of state habeas proceedings after the May 2001
18 expiration of his limitations period cannot rejuvenate that limitations period. *See Green*
19 *v. White*, 223 F.3d 1001, 1003 (9th Cir. 2000). No basis appears in the petition for a later
20 AEDPA-limitations-period starting date. Nor does the face of the petition disclose any
21 basis for equitable tolling.

22 This Court may raise *sua sponte* the question of the statute of limitations bar,
23 so long as it gives Petitioner an opportunity to be heard on the matter. *Herbst v. Cook*, 260
24 F.3d 1039 (9th Cir. 2001). Accordingly, Petitioner shall show cause why this action should
25 not be dismissed as being barred by the one-year statute of limitations. Petitioner shall file
26 his response to the Court's Order to Show Cause not later than 21 days from the filing date
27 of this Order.

