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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RICKEY WILLIAMS,) Case No. CV 12-3176-ABC (JPR)
)
Petitioner,)
) ORDER TO SHOW CAUSE
vs.)
)
TERRI GONZALEZ, Warden, et)
al.)
)
Respondents.)

On April 11, 2012, Petitioner filed a Petition for Writ of Habeas Corpus by a Person in State Custody. The Petition purports to challenge Petitioner's October 1, 1991 guilty plea in Los Angeles County Superior Court to second-degree murder, for which Petitioner was sentenced to 15 years to life. Petitioner raises two claims: his guilty plea was not knowing and intelligent and his counsel had a conflict of interest, both of which denied him due process in violation of the U.S. Constitution. Although Petitioner's answers to the questions on the form petition concerning his exhaustion of these claims are not entirely clear, this Court's review of the California Appellate Courts' website seems to indicate that Petitioner

1 exhausted them in state court earlier this year through various
2 habeas petitions. It does not appear, despite Petitioner's
3 statements to the contrary in his Petition, that he challenged
4 his convictions or sentence on direct appeal to the California
5 Court of Appeal or in a Petition for Review to the California
6 Supreme Court.

7 Under the Antiterrorism and Effective Death Penalty Act of
8 1996 ("AEDPA"), Petitioner had one year from the date his
9 conviction became final in which to file a federal habeas
10 petition. See 28 U.S.C. § 2244(d). That statute provides:

11 (1) A 1-year period of limitation shall apply to an
12 application for a writ of habeas corpus by a person in
13 custody pursuant to the judgment of a State court. The
14 limitation period shall run from the latest of--

15 (A) the date on which the judgment became
16 final by the conclusion of direct review or the
17 expiration of the time for seeking such review;

18 (B) the date on which the impediment to
19 filing an application created by State action in
20 violation of the Constitution or laws of the United
21 States is removed, if the applicant was prevented
22 from filing by such State action;

23 (C) the date on which the constitutional
24 right asserted was initially recognized by the
25 Supreme Court, if the right has been newly
26 recognized by the Supreme Court and made
27 retroactively applicable to cases on collateral
28 review; or

1 (D) the date on which the factual predicate
2 of the claim or claims presented could have been
3 discovered through the exercise of due diligence.

4 (2) The time during which a properly filed
5 application for State post-conviction or other collateral
6 review with respect to the pertinent judgment or claim is
7 pending shall not be counted toward any period of
8 limitation under this subsection.

9 Under California law in effect at the time of Petitioner's
10 conviction, an appeal had to be filed within 60 days of
11 judgment. See Cal. R. Ct. 31 (1991). When the judgment of
12 conviction was entered pursuant to a guilty plea, the defendant
13 was required to file a notice of intended appeal within the
14 60-day period. See R. 31(d), drafter's notes (1991) (noting that
15 from March 17, 1989, to January 1, 1992, no certificate of
16 probable cause was required for appeal following guilty plea).

17 Here, a review of Westlaw and the California Appellate
18 Courts' website shows that Petitioner did not appeal his
19 conviction or sentence. Consequently, "the date on which the
20 judgment became final by conclusion of direct review or the
21 expiration of the time for seeking such review" was sometime in
22 late 1991, when Petitioner's time to file a notice of intended
23 appeal expired.¹ Although Petitioner's one-year limitation
24 period would normally have begun to run upon the finality of his
25 judgment of conviction, AEDPA extended the limitation period for
26 those whose convictions became final before its enactment to one

27
28 ¹Petitioner pleaded guilty on October 1, 1991. It is not clear
when judgment was entered.

1 year after that date - April 24, 1997. United States v. Gamboa,
2 608 F.3d 492, 493 n.1 (9th Cir.), cert. denied, 131 S. Ct. 809
3 (2010). Petitioner did not file his federal Petition until 15
4 years later.

5 From the face of the Petition, it does not appear that
6 Petitioner has any basis for contending that he is entitled to a
7 later trigger date under § 2244(d)(1)(B). Petitioner does not
8 contend that he was impeded from filing his federal petition by
9 unconstitutional state action. Nor does it appear that
10 Petitioner has any basis for a later trigger date under
11 § 2244(d)(1)(C). Petitioner does not contend that any of his
12 claims are based on a federal constitutional right that was
13 initially recognized by the U.S. Supreme Court subsequent to the
14 date his conviction became final and that has been made
15 retroactively applicable to cases on collateral review. Finally,
16 Petitioner does not appear to be entitled to a later trigger date
17 under § 2244(d)(1)(D). Petitioner should have been aware of the
18 underlying factual and legal bases of his claims long ago. As
19 for his first claim, Petitioner contends that he did not know
20 that he could wind up serving more than 15 years in prison (Pet.
21 Attach. at 5), but that must have become apparent to him no later
22 than 2006, 15 years after his conviction. And as for his second
23 claim, Petitioner attaches to the Petition a portion of trial
24 transcript showing that the purported conflict with his counsel
25 arose before he pleaded guilty. (Pet., Ex. D.)

26 Thus, Petitioner's last day to file his federal habeas
27 petition was April 24, 1997, unless a basis for tolling the
28 statute exists. See Patterson v. Stewart, 251 F.3d 1243, 1246

1 (9th Cir. 2001).

2 No basis for statutory tolling under § 2244(d)(2) appears to
3 exist, as Petitioner's state habeas petitions were filed earlier
4 this year. See Ferguson v. Palmateer, 321 F.3d 820, 823 (9th
5 Cir. 2003) (holding that § 2244(d) "does not permit the
6 reinitiation of the limitations period that has ended
7 before the state petition was filed," even if the state petition
8 was timely filed). Under certain circumstances, a habeas
9 petitioner may be entitled to equitable tolling, see Holland v.
10 Florida, 560 U.S. ___, 130 S. Ct. 2549, 2560, 177 L. Ed. 2d 130
11 (2010), but only if he shows that (1) he has been pursuing his
12 rights diligently and (2) "some extraordinary circumstance stood
13 in his way," see Pace v. DiGuglielmo, 544 U.S. 408, 418, 125 S.
14 Ct. 1807, 1814, 161 L. Ed. 2d 669 (2005). Petitioner describes
15 various mental disturbances and illnesses he suffered at the time
16 of his crime and during his trial and guilty plea. In certain
17 circumstances, mental illness can warrant equitable tolling of
18 the statute of limitations. See Bills v. Clark, 628 F.3d 1092,
19 1097-98 (9th Cir. 2010). But Petitioner does not allege in the
20 Petition that his mental condition, or any other circumstance,
21 has prevented him from filing a federal habeas petition in the
22 past 15 years. It would be difficult for him to do so, given
23 that a review of the Court's Case Management/Electronic Case
24 Filing system shows that Petitioner filed a habeas petition in
25 March 2008 challenging a parole decision (Case No. 2:08-cv-01880-
26 ABC-JCR)² and a civil rights action in 1995, which he prosecuted

27
28 ²This case was subsequently transferred to the Eastern District
of California.

1 until early 1998, through the summary judgment stage (Case No.
2 2:95-cv-03204-ABC-BQR).

3 A district court has the authority to raise the statute of
4 limitations issue sua sponte when untimeliness is obvious on the
5 face of a petition; it may summarily dismiss the petition on that
6 ground pursuant to Rule 4 of the Rules Governing § 2254 Cases in
7 the U.S. District Courts, as long as the court gives petitioner
8 adequate notice and an opportunity to respond. Herbst v. Cook,
9 260 F.3d 1039, 1042-43 (9th Cir. 2001).

10 IT THEREFORE IS ORDERED that on or before May 18, 2012,
11 Petitioner show cause in writing, if he has any, why the Court
12 should not dismiss this action with prejudice because it is
13 untimely. If Petitioner intends to rely on the equitable tolling
14 doctrine, he will need to include with his response to the Order
15 to Show Cause a declaration under penalty of perjury stating
16 facts showing that (1) he has been pursuing his rights diligently
17 and (2) "some extraordinary circumstance stood in his way."

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19
20 DATED: April 20, 2012



JEAN ROSENBLUTH
U.S. MAGISTRATE JUDGE