

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MAURICE R. POLK,)	CASE NO. CV 12-7831-JVS (PJW)
)	
Petitioner,)	ORDER TO SHOW CAUSE WHY PETITION
)	SHOULD NOT BE DISMISSED
v.)	
)	
TIM V. VIRGA, WARDEN,)	
)	
Respondent.)	

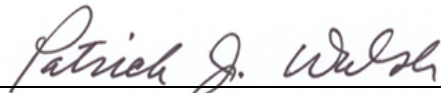
On August 21, 2012, Petitioner constructively filed a Petition for Writ of Habeas Corpus, seeking to challenge his 1997 state conviction and sentence for second degree robbery with the use of a firearm. (Petition at 2.) In the Petition, he claims that the trial court's admission of the victim's testimony regarding the perpetrator's height violated his right to a fair trial and that there was insufficient evidence presented at the preliminary hearing to hold him for trial. (Petition at 5; attached Memorandum of Points and Authorities.) For the following reasons, Petitioner is ordered to show cause why his Petition should not be dismissed because it is time-barred.

State prisoners seeking to challenge their state convictions in federal habeas corpus proceedings are subject to a one-year statute of

1 limitations. 28 U.S.C. § 2244(d). Here, Petitioner did not file an
2 appeal of his conviction or sentence, thus his conviction became final
3 on March 31, 1997--60 days after he was sentenced and the time expired
4 for him to file an appeal. See *Mendoza v. Carey*, 449 F.3d 1065, 1067
5 (9th Cir. 2006); *Lewis v. Mitchell*, 173 F. Supp.2d 1057, 1060 (C.D.
6 Cal. 2001). Therefore, the statute of limitations expired one year
7 later, on March 31, 1998. See *Patterson v. Stewart*, 251 F.3d 1243,
8 1246 (9th Cir. 2001). Petitioner did not file this Petition until
9 August 2012, more than 14 years after the deadline. Accordingly,
10 absent tolling, the Petition is untimely and must be dismissed.

11 IT IS THEREFORE ORDERED that, no later than **October 15, 2012**,
12 Petitioner shall inform the Court in writing why this case should not
13 be dismissed with prejudice because it is barred by the statute of
14 limitations. Failure to timely file a response will result in a
15 recommendation that this case be dismissed.

16 DATED: September 13, 2012

17
18 
19 _____
20 PATRICK J. WALSH
21 UNITED STATES MAGISTRATE JUDGE
22
23
24
25
26
27