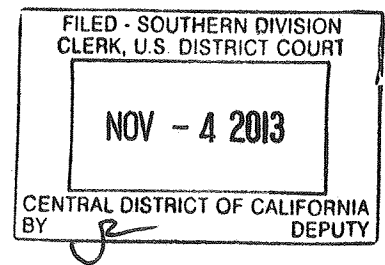


1 I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY
2 FIRST CLASS MAIL POSTAGE PREPAID, TO ALL COUNSEL *Petitioner*
3 OR PARTIES AT THEIR RESPECTIVE MOST RECENT ADDRESS OF
4 RECORD IN THIS ACTION ON THIS DATE.

5 DATED: 11.4.13

6 _____
7 DEPUTY CLERK



8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 DANIEL ANTHONY COWIE,) Case No. CV 13-0791-JFW (JPR)
11)
12 Petitioner,)
13 vs.) ORDER ACCEPTING FINDINGS AND
14 M.D. BITER, Warden,) RECOMMENDATIONS OF U.S.
15) MAGISTRATE JUDGE
16) Respondent.)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

29 Pursuant to 28 U.S.C. § 636, the Court has reviewed the
30 Petition, all the records and files of this case, and the Report
31 and Recommendation ("R&R") of the U.S. Magistrate Judge. The R&R
32 recommended that the Petition be dismissed both because it was
33 untimely and for failure to prosecute given that Petitioner had
34 not responded to the Magistrate Judge's Order to Show Cause
35 concerning its timeliness.

36 On August 19, 2013, Petitioner filed objections to the R&R,
37 arguing that he had in fact filed a petition for writ of
38 certiorari in the U.S. Supreme Court (the R&R stated that it "did
39 not appear" he had done so) and claiming entitlement to equitable
40 tolling because he is ignorant about the law and "it took time"
41 to find a "jailhouse lawyer" to help him after he was transferred

1 to a new prison.¹ The Objections were not filed under penalty of
2 perjury,² but he attached a letter from the Clerk of the U.S.
3 Supreme Court indicating that he did file a petition for writ of
4 certiorari, which was denied on January 9, 2012.

5 On August 23, 2013, the Magistrate Judge issued an order
6 noting that even accepting Petitioner's representation concerning
7 his filing of a petition for writ of certiorari as true, the one-
8 year AEDPA limitation period still expired two weeks before he
9 constructively filed his federal Petition. She gave Petitioner
10 more than a month of additional time to file further objections
11 to the R&R, but he did not do so.

12 As the Magistrate Judge noted, even assuming Petitioner
13

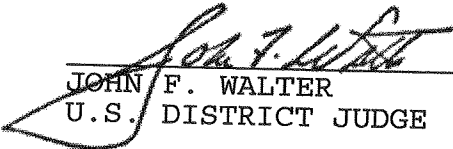
14 ¹Petitioner also asserts that he was housed in
15 administrative segregation and had only limited access to the law
16 library, with no librarian or other inmate to help him; it
17 appears, however, that he offers those circumstances as an excuse
18 for not responding to the Magistrate Judge's Order to Show Cause,
19 not for filing his Petition late. Indeed, he states that he
20 "submitted my writ & shortly got housed in ASU." (Objections at
21 1.) He then proceeds to explain the difficulties he faces while
22 "currently" housed in ASU. (Id. at 2.) His subsequent housing
23 in ASU cannot justify earlier filing his federal Petition late.
24 In any event, he does not claim in his unsworn objections that he
25 has ever been deprived of his legal files or complete access to
26 the law library, so even had he been housed in ASU before the
27 AEDPA deadline expired he would still not deserve equitable
28 tolling. Cf. Knight v. Yates, No. CV F 07-00612 AWI SMS HC, 2007
WL 2695691, at *5-6 (E.D. Cal. Sept. 11, 2007) (allegations of
limited law library access and no regular law librarian too
conclusory to warrant equitable tolling, particularly when not
supported by any actual evidence), accepted by 2007 WL 3340871
(E.D. Cal. Nov. 9, 2007).

26 ²The Magistrate Judge had warned Petitioner in her Order to
27 Show Cause that "[i]f Petitioner intends to rely on the equitable
28 tolling doctrine, he will need to include with his response to
the Order to Show Cause a declaration under penalty of perjury
stating facts" demonstrating entitlement to it.

1 filed a petition for writ of certiorari and it was denied on
2 January 9, 2012, the Petition, which was constructively filed on
3 January 24, 2013, was nonetheless two weeks late. See Cray v.
4 McDonald, No. CV 13-01419-JST (AN), 2013 WL 3923462, at *2 (C.D.
5 Cal. July 29, 2013) (noting that when U.S. Supreme Court denies
6 petition for writ of certiorari, one-year AEDPA limitation period
7 begins running next day). Neither of Petitioner's asserted
8 reasons for his delay constitutes an "extraordinary circumstance"
9 warranting equitable tolling. See Raspberry v. Garcia, 448 F.3d
10 1150, 1154 (9th Cir. 2006) (ignorance of the law does not warrant
11 equitable tolling); Chaffer v. Prosper, 592 F.3d 1046, 1049 (9th
12 Cir. 2010) (per curiam) (no tolling for delay caused by "reliance
13 on [inmate] helpers who were transferred or too busy"). Thus,
14 the Petition was untimely by two weeks and must be dismissed on
15 that basis.

16 Accordingly, having made a de novo determination of those
17 portions of the Report and Recommendation to which objections
18 have been made, the Court concurs with and accepts the Magistrate
19 Judge's recommendation that the Petition be denied as untimely.
20 IT THEREFORE IS ORDERED that Judgment be entered denying the
21 Petition and dismissing this action with prejudice.

22
23 DATED: November 4, 2013

24 
25 _____
26 JOHN F. WALTER
27 U.S. DISTRICT JUDGE
28