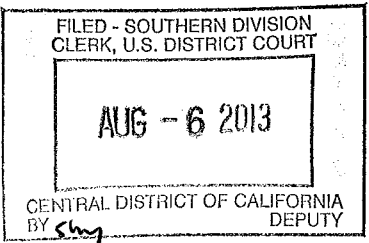


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UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA  
 WESTERN DIVISION

TRAVION TERRETT FORD,  
                           Petitioner,  
                   v.  
 SOTO, Warden,  
                           Respondent.

Case No. CV 13-05115 GW (AN)  
**ORDER TO SHOW CAUSE RE  
 DISMISSAL OF PETITION FOR  
 WRIT OF HABEAS CORPUS BY A  
 PERSON IN STATE CUSTODY AS  
 TIME-BARRED**

**I. BACKGROUND**

Before the Court is a petition for writ of habeas corpus (“Petition”) brought by Travion Terrett Ford (“Petitioner”), a state prisoner proceeding *pro se*. The Petition is brought pursuant to 28 U.S.C. § 2254 and raises four claims directed at his August 31, 2009 conviction the California Superior Court for Los Angeles County. Petitioner was convicted of second degree murder and was sentenced to an indeterminate term of 16 years to life in state prison. (case no. BA346953).

For the reasons set forth below, Petitioner is ordered to show cause why his Petition should not be dismissed with prejudice because it is time-barred.

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1 **II. DISCUSSION**

2 **A. Standard of Review**

3 Rule 4 of the Rules Governing Section 2254 Cases in the United States District  
4 Courts (“Habeas Rules”), 28 U.S.C. foll. § 2254, requires a judge to “promptly  
5 examine” a habeas petition and “[i]f it plainly appears from the petition and any  
6 attached exhibits that the petitioner is not entitled to relief in the district court, the  
7 judge must dismiss the petition and direct the clerk to notify the petitioner.” Local  
8 Rule 72-3.2 of this Court also provides “[t]he Magistrate Judge promptly shall  
9 examine a petition for writ of habeas corpus, and if it plainly appears from the face of  
10 the petition and any exhibits annexed to it that the petitioner is not entitled to relief,  
11 the Magistrate Judge may prepare a proposed order for summary dismissal and submit  
12 it and a proposed judgment to the District Judge.” C.D. Cal. R. 72-3.2. Further, an  
13 untimely habeas petition may be dismissed *sua sponte* if the court gives the petitioner  
14 adequate notice and an opportunity to respond. *Day v. McDonough*, 547 U.S. 198,  
15 209-10, 126 S. Ct. 1675 (2006); *Herbst v. Cook*, 260 F.3d 1039, 1043 (9th Cir. 2001).

16 **B. Statute of Limitations**

17 The Petition is governed by the Antiterrorism and Effective Death Penalty Act  
18 of 1996 (“AEDPA”), which establishes a one-year statute of limitations for state  
19 prisoners to file a federal habeas petition. 28 U.S.C. § 2244(d)(1). In most cases, the  
20 limitations period is triggered by “the date on which the judgment became final by  
21 conclusion of direct review or the expiration of the time for seeking such review.” 28  
22 U.S.C. § 2244(d)(1)(A).

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1           The face of the Petition, attached exhibits, and relevant state court records<sup>1/</sup>  
2 establish the following facts. Petitioner was convicted of the above offense on August  
3 31, 2009, and sentenced on October 29, 2009. On July 8, 2011, the California Court  
4 of Appeal affirmed the judgment (case no. B220313). The California Supreme Court  
5 then denied review of the court of appeal's decision on October 12, 2011 (case no.  
6 S195712). Petitioner has not alleged, and it does not appear, that he filed a petition for  
7 certiorari with the United States Supreme Court. (Pet. at 2-3; state court records.)

8           Therefore, for purposes of AEDPA's limitations period, Petitioner's judgment  
9 became final on January 10, 2012, the ninetieth day after the state high court denied  
10 his petition for review and the last day for him to file a petition for certiorari with the  
11 Supreme Court. *Bowen v. Roe*, 188 F.3d 1157, 1159 (9th Cir. 1999). The statute of  
12 limitations then started to run the next day, on January 11, 2012, and ended a year later  
13 on January 11, 2013. 28 U.S.C. § 2244(d)(1)(A); *see also Patterson v. Stewart*, 251  
14 F.3d 1243, 1245-47 (9th Cir. 2001) (the limitations period begins to run on the day  
15 after the triggering event pursuant to Fed. R. Civ. P. 6(a)). Petitioner did not  
16 constructively file his pending Petition until July 9, 2013 -- 179 days after the  
17 expiration of the limitations period.<sup>2/</sup> Accordingly, absent some basis for tolling or an

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19           <sup>1/</sup> The Court takes judicial notice of Internet records relating to this action in  
20 the state appellate courts (available at <http://appellatecases.courtinfo.ca.gov>) ("state  
21 court records"). *See Smith v. Duncan*, 297 F.3d 809, 815 (9th Cir. 2002) (federal  
22 courts may take judicial notice of related state court documents), *overruled on other*  
*grounds as recognized in Cross v. Sisto*, 676 F.3d 1172 (9th Cir. 2012).

23           <sup>2/</sup> Pursuant to the "mailbox rule," a *pro se* prisoner's federal habeas petition  
24 is deemed to be filed on the date the prisoner delivers the petition to prison authorities  
25 for mailing to the clerk. *Houston v. Lack*, 487 U.S. 266, 270-71, 108 S. Ct. 2379  
26 (1988); *Huizar v. Carey*, 273 F.3d 1220, 1222 (9th Cir. 2001); *see also Habeas Rule*  
27 *3(d)*. For purposes of the timeliness analysis, and absent any evidence to the contrary,  
28 the Court finds Petitioner constructively filed the Petition by delivering it to the prison  
mail system on July 9, 2013, the date written and initialed by a prison official on the

(continued...)

1 alternative start date to the limitations period under 28 U.S.C. § 2244(d)(1), the  
2 pending Petition is time-barred.

### 3 **C. Statutory Tolling**

4 AEDPA includes a statutory tolling provision that suspends the limitations  
5 period for the time during which a “properly-filed” application for post-conviction or  
6 other collateral review is “pending” in state court. 28 U.S.C. § 2244(d)(2); *Waldrip v.*  
7 *Hall*, 548 F.3d 729, 734 (9th Cir. 2008); *Bonner v. Carey*, 425 F.3d 1145, 1148 (9th  
8 Cir. 2005). An application is “pending” until it has achieved final resolution through  
9 the state’s post-conviction procedures. *Carey v. Saffold*, 536 U.S. 214, 220, 122 S. Ct.  
10 2134 (2002). However, to qualify for statutory tolling, a state habeas petition must be  
11 filed before the expiration of AEDPA’s limitations period. *See Ferguson v. Palmateer*,  
12 321 F.3d 820, 823 (9th Cir. 2003) (“[S]ection 2244(d) does not permit the reinitiation  
13 of the limitations period that has ended before the state petition was filed.”); *see also*  
14 *Webster v. Moore*, 199 F.3d 1256, 1259 (11th Cir. 2000) (“A state-court petition []  
15 that is filed following the expiration of the limitations period cannot toll that period  
16 because there is no period remaining to be tolled.”).

17 Neither the face of the Petition, attached exhibits, nor relevant state court  
18 records establish Petitioner has filed any state habeas petitions challenging his  
19 judgment of conviction. (Pet. at 3; state court records.) Consequently, Petitioner is not  
20 entitled to any statutory tolling.

### 21 **D. Alternative Start of the Statute of Limitations**

#### 22 **1. State-Created Impediment**

23 In rare instances, AEDPA’s one-year limitations period can run from “the date  
24 on which the impediment to filing an application created by State action in violation  
25 of the Constitution or laws of the United States is removed, if the applicant was  
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27 <sup>2/</sup> (...continued)  
28 back of the envelope containing the Petition.

1 prevented from filing by such State action.” 28 U.S.C. § 2244(d)(1)(B). Asserting that  
2 the statute of limitations was delayed by a state-created impediment requires  
3 establishing a due process violation. *Lott v. Mueller*, 304 F.3d 918, 925 (9th Cir.  
4 2002). The Petition does not set forth any facts for an alternate start date of the  
5 limitations period under this provision.

## 6 **2. Newly Recognized Constitutional Right**

7 AEDPA provides that, if a claim is based upon a constitutional right that is  
8 newly recognized and applied retroactively to habeas cases by the United States  
9 Supreme Court, the one-year limitations period begins to run on the date which the  
10 new right was initially recognized by the Supreme Court. 28 U.S.C. § 2244(d)(1)(C).  
11 The Petition does not set forth any facts for an alternate start date of the limitations  
12 period under this provision.

## 13 **3. Discovery of Factual Predicate**

14 AEDPA also provides that, in certain cases, its one-year limitations period shall  
15 run from “the date on which the factual predicate of the claim or claims presented  
16 could have been discovered through the exercise of due diligence.” 28 U.S.C. §  
17 2244(d)(1)(D); *Ford v. Gonzalez*, 683 F.3d 1230, 1235 (9th Cir. 2012). The Petition  
18 does not set forth any facts for an alternate start date of the limitations period under  
19 this provision.

## 20 **E. Equitable Tolling**

21 AEDPA’s limitations period “is subject to equitable tolling in appropriate  
22 cases.” *Holland v. Florida*, --- U.S. ---, 130 S. Ct. 2549, 2560 (2010). Specifically, “a  
23 litigant seeking equitable tolling bears the burden of establishing two elements: (1)  
24 that he has been pursuing his rights diligently, and (2) that some extraordinary  
25 circumstance stood in his way.” *Pace v. DiGuglielmo*, 544 U.S. 408, 418, 125 S. Ct.  
26 1807 (2005); *Lawrence v. Florida*, 549 U.S. 327, 336, 127 S. Ct. 1079 (2007).

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**Further, if Petitioner determines the Court's analysis is correct and the  
Petition is time-barred, he should consider filing a Request For Voluntary  
Dismissal of this action pursuant to Fed. R. Civ. P. 41(a)(1) in lieu of a response.**

IT IS SO ORDERED.

DATED: August 6, 2013

  
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ARTHUR NAKAZATO  
UNITED STATES MAGISTRATE JUDGE