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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GUADALUPE TORRES RANGEL,
Petitioner,
v.
DAVE DAVEY, Warden,
Respondent.

NO. CV 14-4327-DSF (AGR)

ORDER TO SHOW CAUSE

On June 5, 2014, Petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. For the reasons discussed below, it appears the one-year statute of limitations has expired.

The court, therefore, orders Petitioner to show cause on or before **July 16, 2014**, why the court should not recommend dismissal of the petition with prejudice based on expiration of the one-year statute of limitations.

1 I.

2 **PROCEDURAL BACKGROUND**

3 On April 9, 2010, a Los Angeles County jury convicted Petitioner of first
4 degree murder, attempted premeditated murder, conspiracy, assault with a
5 deadly weapon, and extortion. (Petition at 2.). The court sentenced Petitioner to
6 life without the possibility of parole, 107 years to life, and 17 years, 8 months in
7 prison. (*Id.*) On February 15, 2012, the California Court of Appeal struck one of
8 the firearm enhancements, thus reducing the indeterminate part of Petitioner’s
9 sentence by 25 years, but otherwise affirmed the judgment. (*Id.* at 2-3; *People v.*
10 *Murillo*, 2012 WL 488260, *23 (Cal. Ct. App. 2012.) On May 9, 2012, the
11 California Supreme Court denied review. (*Id.* at 3.)

12 On August 28, 2012, Petitioner filed a habeas petition in the Superior
13 Court, which was denied on September 28, 2012. (*Id.* at 4.) Petitioner did not file
14 any other state habeas petitions. (*Id.*)

15 On May 30, 2014, Petitioner constructively filed the instant petition in this
16 court in which he raises six grounds. (*Id.* at 5 to 6-A; back of envelope.)

17 II.

18 **STATUTE OF LIMITATIONS**

19 The petition was filed after enactment of the Antiterrorism and Effective
20 Death Penalty Act of 1996 (“AEDPA”). Therefore, the court applies the AEDPA in
21 reviewing the petition. *Lindh v. Murphy*, 521 U.S. 320, 336, 117 S. Ct. 2059, 138
22 L. Ed. 2d 481 (1997).

23 The AEDPA contains a one-year statute of limitations for a petition for writ
24 of habeas corpus filed in federal court by a person in custody pursuant to a
25 judgment of a state court. 28 U.S.C. § 2244(d)(1). The one-year period starts
26 running on the latest of either the date when a conviction becomes final under 28
27 U.S.C. § 2244(d)(1)(A) or on a date set in § 2244(d)(1)(B)-(D). The only
28 subdivision relevant here is (d)(1)(A).

1 The California Supreme Court denied review on direct appeal on May 9,
2 2012. Petitioner's conviction became final 90 days later on August 7, 2012. See
3 *Bowen v. Roe*, 188 F.3d 1157, 1159 (9th Cir. 1999). Absent tolling, the statute of
4 limitations expired on August 7, 2013.

5 **A. Statutory Tolling**

6 The statute of limitations is tolled during the time "a properly filed
7 application for State post-conviction or other collateral review with respect to the
8 pertinent judgment or claim is pending." 28 U.S.C. § 2244(d)(2).

9 Petitioner entitled to statutory tolling from August 28, 2012 (the filing of the
10 habeas petition in the Superior Court) to September 28, 2012 (the denial of the
11 petition). At the point Petitioner filed the state habeas petition, he had used up 21
12 days of the 365-day limitations period (from August 7, 2012, when the conviction
13 became final, to August 28, 2012, when Petitioner filed the state habeas petition).
14 When the limitations period began to run again on September 28, 2012, he had
15 344 days remaining (365 - 21). However, 609 days elapsed until he
16 constructively filed here on May 30, 2014. Thus, he was 265 days late (609 -
17 344).

18 Absent equitable tolling, the petition is time-barred.

19 **B. Equitable Tolling**

20 "[T]he timeliness provision in the federal habeas corpus statute is subject to
21 equitable tolling." *Holland v. Florida*, 130 S. Ct. 2549, 2554, 177 L. Ed. 2d 130
22 (2010). "[A] 'petitioner' is 'entitled to equitable tolling' only if he shows '(1) that he
23 has been pursuing his rights diligently, and (2) that some extraordinary
24 circumstance stood in his way' and prevented timely filing." *Id.* at 2562 (quoting
25 *Pace v. DiGuglielmo*, 544 U.S. 408, 418, 125 S. Ct. 1807, 161 L. Ed. 2d 669
26 (2005)). "The diligence required for equitable tolling purposes is "reasonable
27 diligence," not "maximum feasible diligence." *Id.* at 2565 (citations and quotation
28 marks omitted). The extraordinary circumstances must have been the cause of

1 an untimely filing. *Pace*, 544 U.S. at 418. “[E]quitable tolling is available for this
2 reason only when “extraordinary circumstances beyond a prisoner’s control
3 make it *impossible* to file a petition on time” and “the extraordinary
4 circumstances” circumstances” were the *cause* of [the prisoner’s] untimeliness.”
5 *Bills v. Clark*, 628 F.3d 1092, 1097 (9th Cir. 2010) (citations omitted, emphases in
6 original).

7 Petitioner does not indicate he is entitled to equitable tolling. The petition
8 remains time-barred.

9 **III.**

10 **ORDER TO SHOW CAUSE**

11 IT IS THEREFORE ORDERED that on or before **July 16, 2014**, Petitioner
12 shall show cause why the court should not recommend dismissal with prejudice
13 of the petition based on expiration of the one-year statute of limitations.

14 **Petitioner is advised that if he fails to respond to this order to show**
15 **cause by the above deadline, the court will recommend that the petition be**
16 **dismissed with prejudice based on expiration of the one-year statute of**
17 **limitations.**

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19 DATED: June 16, 2014

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22 ALICIA G. ROSENBERG
23 United States Magistrate Judge
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