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I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY FIRST CLASS MAIL, POSTAGE PREPAID, TO (SEE BELOW) AT THEIR RESPECTIVE MOST RECENT ADDRESS OF RECORD IN THIS ACTION ON THIS DATE
TO: DATE: DEPUTY CLERK:
Petitioner on July 25, 2014 by TS

FILED
CLERK, U.S. DISTRICT COURT
July 25, 2014
CENTRAL DISTRICT OF CALIFORNIA
BY: TS DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

BALTAZAR MALDONADO
QUINTADOR,

Petitioner,

v.

SPEARMAN (Warden),

Respondent.

No. CV 14-5570-JLS (DFM)

ORDER TO SHOW CAUSE

On or about June 20, 2014, Petitioner Baltazar Maldonado Quintador (“Petitioner”) constructively filed a Petition for Writ of Habeas Corpus by a Person in State Custody (“Petition”) in the United States District Court for the Northern District of California. Because Petitioner seeks to challenge his conviction sustained in Ventura County Superior Court, the District Court for the Northern District of California transferred Petitioner’s case to this United States District Court, the district in which Ventura County is located.

Petitioner’s conviction in Ventura County Superior Court was sustained on August 29, 2000, at which time Petitioner was sentenced to a term of 45 years to life imprisonment. Dkt. 1 (“Petition”) at 1. Petitioner claims that his

1 pleas of guilty were induced by duress, menace, deceptive means, and trickery
2 by his defense attorney, the prosecutor, and police. Id. at 5.

3 Because this action was filed after the President signed into law the
4 Antiterrorism and Effective Death Penalty Act of 1996 (the “AEDPA”) on
5 April 24, 1996, it is subject to the AEDPA’s one-year limitation period, as set
6 forth at 28 U.S.C. § 2244(d). See Calderon v. U.S. Dist. Ct. (Beeler), 128 F.3d
7 1283, 1287 n.3 (9th Cir. 1997), overruled in part on other grounds by Calderon
8 v. U.S. Dist. Ct. (Kelly), 163 F.3d 530 (9th Cir. 1998) (en banc). 28 U.S.C. §
9 2244(d) provides:

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

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

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

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

25 (D) the date on which the factual predicate of the
26 claim or claims presented could have been discovered through the
27 exercise of due diligence.

28 Ordinarily, the starting date of the limitations period is that provided by

1 § 2244(d)(1)(A), that is, the date on which the judgment becomes final after the
2 conclusion of direct review. In his Petition, Petitioner states that he did not file
3 a direct appeal from his conviction. Petition at 1-2. Where, as here, the
4 petitioner did not directly appeal from the judgment, the judgment became
5 final within the meaning of § 2244(d)(1)(A) when the time for seeking appellate
6 review from the state court expired. Gonzalez v. Thaler, --- U.S. ---, 132 S. Ct.
7 641, 653-54 (2012). Under state law, Petitioner had sixty days to appeal the
8 judgment. Cal. Pen. Code § 1237.5; Cal. Rules Ct., Rule 31(d) (now Rule
9 8.308(a)). Thus, Petitioner's judgment became final within the meaning of §
10 2244(d) (1)(A) upon the expiration of the sixty-day period for filing a notice of
11 appeal, or on October 28, 2000, the date that the period for seeking appellate
12 review expired. Therefore, the one-year limitations period began to run one
13 day later on October 29, 2000, and expired on October 29, 2001.

14 From the face of the Petition, it does not appear that Petitioner has any
15 basis for contending that he is entitled to a later trigger date under §
16 2244(d)(1)(B). Nor does it appear that Petitioner has any basis for contending
17 that he is entitled to a later trigger date under § 2244(d)(1)(C) because neither
18 of the claims alleged in the Petition appears to be based on a federal
19 constitutional right that was initially recognized by the United States Supreme
20 Court subsequent to the date his conviction became final and that has been
21 made retroactively applicable to cases on collateral review. Finally, it does not
22 appear that Petitioner has any basis for contending that he is entitled to a later
23 trigger date under § 2244(d)(1)(D) since it appears from the face of the Petition
24 that Petitioner was aware of the factual predicate of his claims as of the time of
25 his guilty plea. See Hasan v. Galaza, 254 F.3d 1150, 1154 n.3 (9th Cir. 2001)
26 (statute of limitations begins to run when a prisoner “knows (or through
27 diligence could discover) the important facts, not when the prisoner recognizes
28 their legal significance”).

1 Thus, unless a basis for tolling the statute existed, Petitioner’s last day to
2 file his federal habeas petition was October 29, 2001, or over 12 years ago. See
3 Patterson v. Stewart, 251 F.3d 1243, 1246 (9th Cir. 2001). No basis for
4 statutory tolling under § 2244(d)(2) appears to exist here. The only state
5 collateral challenges filed by Petitioner subsequent to the date his judgment of
6 conviction became final are habeas petitions that Petitioner filed with the
7 Ventura County Superior Court and California Supreme Court in 2013 and
8 2014, respectively. See Petition at 3-4. It does not appear to the Court that
9 Petitioner would be entitled to any statutory tolling for any of those state
10 habeas petitions because they were not filed until over a decade after
11 Petitioner’s federal filing deadline already had lapsed. See, e.g., Ferguson v.
12 Palmateer, 321 F.3d 820, 823 (9th Cir. 2003) (holding that § 2244(d) “does not
13 permit the reinitiation of the limitations period that has ended before the state
14 petition was filed,” even if the state petition was timely filed); Jiminez v. Rice,
15 276 F.3d 478, 482 (9th Cir. 2001); Wixom v. Washington, 264 F.3d 894, 898-
16 99 (9th Cir. 2001).

17 The Supreme Court has held that the AEDPA’s one-year limitation
18 period also is subject to equitable tolling in appropriate cases. See Holland v.
19 Florida, 560 U.S. 605, 130 S. Ct. 2548, 2560 (2010). However, a habeas
20 petitioner is entitled to equitable tolling only if he shows (1) that he has been
21 pursuing his rights diligently; and (2) that “some extraordinary circumstance
22 stood in his way.” See Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005); see also
23 Holland, 130 S. Ct. at 2562. Here, Petitioner alleges nothing to indicate that
24 any circumstances exist that would establish a claim for equitable tolling.

25 The Ninth Circuit has held that the district court has the authority to
26 raise the statute of limitations issue sua sponte when untimeliness is obvious
27 on the face of the petition and to summarily dismiss a petition on that ground
28 pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United

1 States District Courts, so long as the court “provides the petitioner with
2 adequate notice and an opportunity to respond.” See Nardi v. Stewart, 354
3 F.3d 1134, 1141 (9th Cir. 2004); Herbst v. Cook, 260 F.3d 1039, 1042-43 (9th
4 Cir. 2001).

5 IT THEREFORE IS ORDERED that, on or before August 29, 2014,
6 Petitioner show cause in writing, if any he has, why the Court should not
7 recommend that this action be summarily dismissed with prejudice on the
8 ground of untimeliness.

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10 Dated: July 25, 2014



11 DOUGLAS F. McCORMICK
12 United States Magistrate Judge
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