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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CHAD THOMAS RICHMOND,

Petitioner,

v.

CONNIE GIPSON, Warden,

Respondent.

NO. CV 14-6812-AG (AGR)

ORDER TO SHOW CAUSE

On September 2, 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 **October 15, 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 December 18, 2003, a Los Angeles County jury convicted Petitioner of
4 first degree robbery, assault with a deadly weapon (semiautomatic firearm), false
5 imprisonment, attempted robbery, first degree burglary, and possession of a
6 firearm in a school. (Petition, Enclosure A.) The court sentenced Petitioner to
7 25 years, 4 months in prison. (Petition, Enclosure B at 2.)

8 On June 6, 2005, the California Court of Appeal affirmed most of the
9 convictions, modified and struck some of the counts, and reduced Petitioner’s
10 prison term to 22 years, 4 months in prison. (Petition, Enclosure A; Enclosure B
11 at 2.) On September 21, 2005, the California Supreme Court denied review.
12 (Petition at 3.)

13 On June 23, 2013, Petitioner filed his first habeas petition in the Superior
14 Court. Petitioner filed habeas petitions up the ladder. The California Supreme
15 Court denied the last habeas petition on June 30, 2014. (Petition at 3-4(a).)

16 Petitioner raises two grounds in the instant petition. (Petition at 5.)¹

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).

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25 ¹ Petitioner submitted two envelopes containing the instant petition. The
26 first envelope is marked #1 of 3 and has a date on the back of it of August 24,
27 2014. Another envelope is marked 3 of 3 and has no date on the back of it but
28 was received by this court on August 18, 2014. Assuming there was a “second”
envelope, it was not received by the Clerk’s office. Finally, the petition was dated
August 1, 2014, and the proof of service dated August 25, 2014. Although
immaterial to the timeliness issue, for the purpose of this Order, the court will use
August 1, 2014 as the constructive filing date. Petitioner is free to submit the
contents of the second envelope.

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

7 The California Supreme Court denied review on direct appeal on
8 September 21, 2005. Petitioner’s conviction became final 90 days later on
9 December 20, 2005. See *Bowen v. Roe*, 188 F.3d 1157, 1159 (9th Cir. 1999).
10 Absent tolling, the statute of limitations expired on December 20, 2006. The
11 petition here was filed over seven years late.

12 **A. Statutory Tolling**

13 The statute of limitations is tolled during the time “a properly filed
14 application for State post-conviction or other collateral review with respect to the
15 pertinent judgment or claim is pending.” 28 U.S.C. § 2244(d)(2). Because
16 Petitioner did not file his first state habeas petition until 2013, he is not entitled to
17 statutory tolling. See *Welch v. Carey*, 350 F.3d 1079, 1081-84 (9th Cir. 2003)
18 (state habeas petition filed after the limitations has expired does not revive the
19 expired limitations period).

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

21 **B. Equitable Tolling**

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

1 diligence,” not “maximum feasible diligence.” *Id.* at 2565 (citations and quotation
2 marks omitted). The extraordinary circumstances must have been the cause of
3 an untimely filing. *Pace*, 544 U.S. at 418. “[E]quitable tolling is available for this
4 reason only when “extraordinary circumstances beyond a prisoner’s control
5 make it *impossible* to file a petition on time” and “the extraordinary
6 circumstances” circumstances” were the *cause* of [the prisoner’s] untimeliness.”
7 *Bills v. Clark*, 628 F.3d 1092, 1097 (9th Cir. 2010) (citations omitted, emphases in
8 original).

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


11 **III.**

12 **ORDER TO SHOW CAUSE**

13 IT IS THEREFORE ORDERED that on or before **October 15, 2014**,
14 Petitioner shall show cause, if there be any, why the court should not recommend
15 dismissal with prejudice of the petition based on expiration of the one-year statute
16 of limitations.

17 **Petitioner is also advised that if he fails to respond to this order to**
18 **show cause by October 15, 2014, the court will recommend that the petition**
19 **be dismissed with prejudice based on expiration of the one-year statute of**
20 **limitations.**

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22 DATED: September 15, 2014

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25 ALICIA G. ROSENBERG
26 United States Magistrate Judge
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