

1 a habeas corpus petition in federal court. 28 U.S.C. § 2244(d). In most cases, the
2 limitations period commences on the date a petitioner's conviction became final. *See* 28
3 U.S.C. § 2244(d)(1). The limitations period will start instead on one of the following dates,
4 whichever is latest, if any of them falls after the petitioner's conviction becomes final: the
5 date on which a State-created impediment – itself a violation of Constitutional law – was
6 removed; the date on which a newly-recognized Constitutional right was established; or
7 the date on which the factual predicate for the claims could have been discovered through
8 the exercise of due diligence. 28 U.S.C. § 2244(d)(1).

9 The time spent in state court pursuing collateral relief in a timely manner is
10 excluded, *see* 28 U.S.C. § 2244(d)(2), and the statute also is subject to equitable tolling.
11 *Holland v. Florida*, 560 U.S. 631, 648 (2010).

12 Petitioner indicates that he signed the proof of service for the current petition
13 on October 20, 2014. (As noted above, the petition itself is unsigned.) From the face of
14 the petition and from judicially-noticeable materials, the Court discerns as follows:

- 15 (a) On March 28, 2007 in Los Angeles County Superior Court, Petitioner pleaded guilty
16 to drug trafficking and apparently admitted that he had suffered a prior felony
17 conviction. On August 24, 2007, he was sentenced to 20 years in prison. *See* Pet.
18 ¶ 2. (The Court assumes that the criminal *judgment*, including the conviction and
19 sentence, was entered on August 24, 2007.)
- 20 (b) Petitioner successfully sought to appeal, but the California Court of Appeal affirmed
21 on June 24, 2008. *See People v. Sharp*, No. B203244, 2008 WL 2501878
22 (Cal.Ct.App. 2d Dist. 2008). Petitioner's direct review appears to have ended there.
23 That court's docket reflects no petitions either (1) for further direct review in the
24 California Supreme Court or (2) for *certiorari*. His conviction therefore became
25 final after September 23, 2008, the day after the expiration of the United States
26 Supreme Court's 90-day deadline for seeking *certiorari*. *See* SUP. CT. R. 13.1.
27 Petitioner's one-year AEDPA limitations period began to run on that date.
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- 1 (c) One year passed. The limitations period appears to have expired after Thursday,
2 September 24, 2009.
- 3 (d) Nearly seven months passed. On April 16, 2010, Petitioner filed the first of a series
4 of four unsuccessful (and non-hierarchical) state habeas petitions in the California
5 Supreme Court and California Court of Appeal. *See* dockets in Cal. Supreme Ct.
6 case nos. S181964 (filed Apr. 16, 2010 and denied Oct. 27, 2010), S219959 (filed
7 July 16, 2014 and denied Sept. 24, 2014); Cal.Ct.App. case nos. B250096 (filed
8 July 23, 2013 and denied July 30, 2013), B256497 (filed May 27, 2014 and denied
9 June 6, 2014). The state supreme court denied the last of these petitions on
10 September 24, 2014.
- 11 (e) About four weeks later, Petitioner signed the current petition.

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13 Unless this Court has miscalculated or some form of additional tolling applies
14 in sufficient measure, this action became stale after September 24, 2009, one year after
15 Petitioner's conviction became final. His commencement of state habeas proceedings
16 thereafter cannot rejuvenate his stale claims. *See Green v. White*, 223 F.3d 1001, 1003 (9th
17 Cir. 2000).

18 This Court may raise *sua sponte* the question of the statute of limitations bar,
19 so long as it gives Petitioner an opportunity to be heard on the matter. *Herbst v. Cook*, 260
20 F.3d 1039 (9th Cir. 2001). Accordingly, Petitioner shall show cause in writing why this
21 action should not be dismissed as being barred by the one-year statute of limitations.
22 Petitioner shall file his response to the Court's Order to Show Cause not later than 21 days
23 from the filing date of this Order. If Petitioner does not file a response within the time
24 allowed, the action may be dismissed for failure to timely file, and for failure to prosecute.

25 IT IS SO ORDERED.

26 DATED: October 28, 2014

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RALPH ZAREFSKY
UNITED STATES MAGISTRATE JUDGE