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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
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Petitioner on 7-31-15 by TS

FILED
CLERK, U.S. DISTRICT COURT
July 31, 2015
CENTRAL DISTRICT OF CALIFORNIA
BY: TS DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ZEVONZELL E. SIMS,) No. CV 15-5484-DOC (DFM)
)
Petitioner,) ORDER TO SHOW CAUSE
)
v.)
)
W.L. MONTGOMERY, Warden,)
)
Respondent.)

On July 20, 2015, Petitioner Zevonzell Sims (“Petitioner”) filed a Petition for Writ of Habeas Corpus by a Person in State Custody in this Court. Dkt. 1 (“Petition”). The petition seeks relief from a sentence imposed after a jury convicted Petitioner in 1995 of murder, attempted murder with use of a firearm, and shooting at an occupied vehicle. *Id.* at 2.¹ Petitioner was sentenced to 18 years to life in state prison. *Id.*

A. The Petition Is Facially Untimely

In 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act (“AEDPA”), a portion of which established a one-year statute of

¹ All page citations are to the CM/ECF pagination.

1 limitations for bringing a habeas corpus petition in federal court. 28 U.S.C. §
2 2244(d). In most cases, the limitations period commences on the date a
3 petitioner's conviction became final. See 28 U.S.C. § 2244(d)(1). However, for
4 convictions that became final before AEDPA took effect, such as Petitioner's,
5 the limitation period begins with AEDPA's effective date of April 24, 1996.
6 Miles v. Prunty, 187 F.3d 1104, 1105 (9th Cir. 1999). Accordingly, Petitioner
7 had until April 24, 1997 to file a timely habeas petition in this Court. However,
8 Petitioner did not file the instant action until July 20, 2015, more than 18 years
9 too late.

10 From the face of the Petition, it does not appear that Petitioner has any
11 basis for contending that he is entitled to a later trigger date under §
12 2244(d)(1)(B). Nor does it appear that Petitioner has any basis for contending
13 that he is entitled to a later trigger date under § 2244(d)(1)(C) because none of
14 the claims alleged in the Petition appear to be based on a federal constitutional
15 right that was initially recognized by the United States Supreme Court
16 subsequent to the date his conviction became final and that has been made
17 retroactively applicable to cases on collateral review. Finally, it does not
18 appear that Petitioner has any basis for contending that he is entitled to a later
19 trigger date under § 2244(d)(1)(D) because it appears from the face of the
20 Petition that Petitioner was aware of the factual predicate of all his claims at
21 the time of his trial in 1995. See Hasan v. Galaza, 254 F.3d 1150, 1154 n.3 (9th
22 Cir. 2001) (statute of limitations begins to run when a prisoner "knows (or
23 through diligence could discover) the important facts, not when the prisoner
24 recognizes their legal significance").

25 **B. It Does Not Appear that Petitioner Is Entitled to Any Statutory or**
26 **Equitable Tolling**

27 Thus, unless a basis for tolling the statute existed, Petitioner's last day to
28 file his federal habeas petition was April 24, 1997, more than 18 years ago. See

1 Patterson v. Stewart, 251 F.3d 1243, 1246 (9th Cir. 2001). No basis for
2 statutory tolling under § 2244(d)(2) appears to exist here. The only state
3 collateral challenges filed by Petitioner subsequent to the date his judgment of
4 conviction became final are habeas petitions that Petitioner filed in the
5 California state courts in 2014. See Petition at 2-3, 54, 56, 69. It does not
6 appear that Petitioner would be entitled to statutory tolling for any of those
7 state habeas petitions because they were not filed until approximately 17 years
8 after Petitioner’s federal filing deadline had already lapsed.² See, e.g., Ferguson
9 v. Palmateer, 321 F.3d 820, 823 (9th Cir. 2003) (holding that § 2244(d) “does
10 not permit the reinitiation of the limitations period that has ended before the
11 state petition was filed,” even if the state petition was timely filed); Jimenez v.
12 Rice, 276 F.3d 478, 482 (9th Cir. 2001); Wixom v. Washington, 264 F.3d 894,
13 898-99 (9th Cir. 2001).

14 The Supreme Court has held that AEDPA’s one-year limitation period is
15 also subject to equitable tolling in appropriate cases. See Holland v. Florida,
16 560 U.S. 605, 645 (2010). However, a habeas petitioner is entitled to equitable
17 tolling only if he shows (1) that he has been pursuing his rights diligently; and
18 (2) that “some extraordinary circumstance stood in his way.” See Pace v.
19 DiGuglielmo, 544 U.S. 408, 418 (2005); see also Holland, 560 U.S. at 649.
20 Here, Petitioner does not allege that any circumstances exist which would
21 establish a right to equitable tolling.

22 **C. Conclusion**

23 A district court has the authority to raise the statute of limitations issue
24 sua sponte when untimeliness is obvious on the face of the petition and to

25 ² It appears that Petitioner also filed a petition for writ of certiorari in the
26 United States Supreme Court. See Petition at 7. However, this petition does
27 not toll the one-year statute of limitations because it was filed long after the
28 deadline had already elapsed.

1 summarily dismiss a petition on that ground pursuant to Rule 4 of the Rules
2 Governing Section 2254 Cases in the United States District Courts, so long as
3 the court “provides the petitioner with adequate notice and an opportunity to
4 respond.” See Nardi v. Stewart, 354 F.3d 1134, 1141 (9th Cir. 2004); Herbst v.
5 Cook, 260 F.3d 1039, 1042-43 (9th Cir. 2001).

6 IT THEREFORE IS ORDERED that, on or before August 28, 2015,
7 Petitioner show cause in writing as to why the Court should not recommend
8 that this action be summarily dismissed with prejudice on the ground of
9 untimeliness.

10
11 Dated: July 31, 2015



DOUGLAS F. McCORMICK
United States Magistrate Judge