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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CASE NO. CV 16-914-JGB (AGR)

GREGORY GOODS,  
  
  Petitioner,  
  
                  vs.  
  
JEFFREY MACOMBER, Warden,  
  
  Respondent.

ORDER TO SHOW CAUSE

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The Court issues this Order To Show Cause directed to Petitioner because the face of the petition suggests that his challenge to his 2009 conviction may be time-barred.

In 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act (“AEDPA”), a portion of which established a one-year statute of limitations for bringing a habeas corpus petition in federal court. 28 U.S.C. § 2244(d). In most cases, the limitations period commences on the date a petitioner’s conviction became final. See 28 U.S.C. § 2244(d)(1).

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

1 Petitioner indicates that he signed the current petition on February 3, 2016.  
2 From the face of the petition and from judicially-noticeable materials, the Court  
3 discerns as follows:

- 4 (a) On July 30, 2009, a Los Angeles County Superior Court jury convicted  
5 Petitioner of several crimes, including forcible rape and kidnapping to commit  
6 rape. He was sentenced to prison for 63 years and eight months. Pet. ¶ 2.
- 7 (b) Petitioner appealed, presenting three grounds for relief not reasserted here.  
8 The California Court of Appeal affirmed on March 2, 2011. Pet. ¶ 3. On May  
9 11, 2011, the California Supreme Court denied further direct review. Pet. ¶ 4.
- 10 (c) Petitioner sought certiorari in the Supreme Court, but the high court denied the  
11 petition on March 26, 2012 in its case number 11-8498. Petitioner’s conviction  
12 became final at that time – and, on the current record, it appears that his one-  
13 year AEDPA limitations period also began to run.
- 14 (d) Nine and a half months passed. On January 8, 2013, Petitioner filed a habeas  
15 petition in the trial court, stopping the AEDPA clock with 75 days remaining. A  
16 year and a half later on July 10, 2014, the trial court denied the petition. Pet.  
17 ¶ 6(a).
- 18 (e) Sixty-three days passed. On September 11, 2014, Petitioner filed a habeas  
19 petition in the California Court of Appeal, reasserting the trial-court claims. That  
20 court denied relief on September 18, 2014. Pet. ¶ 6(b). If Petitioner  
21 *constructively* filed that petition several days before it was physically filed – and,  
22 thus, the “gap” between the trial court’s denial and the filing of the appellate-  
23 court petition did not exceed “30 to 60 days” – then Petitioner is entitled to “gap  
24 tolling” for that period. See *Evans v. Chavis*, 546 U.S. 189, 193 (2006) (*Chavis*)  
25 (rejecting such tolling for unexplained gaps exceeding “30 to 60 days”). If so,  
26 he still had 75 days remaining in his one-year limitations period at this point.
- 27 (f) Three and a half months passed. On January 7, 2015, Petitioner presented the  
28 same habeas claims to the California Supreme Court. That court denied relief

1 on June 20, 2015. Pet. ¶ 6(c). This 111-day gap, if not satisfactorily explained,  
2 far exceeds the “30 to 60” period contemplated for “gap tolling” under *Chavis*.

3 (g) Seven and half months later, Petitioner signed the current petition.

4 \* \* \* \* \*

5 This action is time-barred unless equitable tolling applies. The action became  
6 stale no later (but possibly earlier) than early December of 2014, 75 days after the  
7 California Court of Appeal denied habeas relief. Petitioner’s continuation of state  
8 habeas proceedings thereafter did not rejuvenate his stale claims. See *Green v.*  
9 *White*, 223 F.3d 1001, 1003 (9th Cir. 2000). Even if Petitioner received “gap tolling”  
10 for the 111-day period between his final two state habeas petitions, moreover, the  
11 current action would still be stale. In that scenario, Petitioner would have had 75 days  
12 remaining in his AEDPA period when the California Supreme Court denied relief on  
13 June 20, 2015. Petitioner did not constructively file the current action for over seven  
14 months thereafter.

15 “[A] ‘petitioner’ is ‘entitled to equitable tolling’ only if he shows ‘(1) that he has  
16 been pursuing his rights diligently, and (2) that some extraordinary circumstance stood  
17 in his way’ and prevented timely filing.” *Holland, supra*, 560 U.S. at 649 (quoting *Pace*  
18 *v. DiGuglielmo*, 544 U.S. 408, 418 (2005)). “The diligence required for equitable  
19 tolling purposes is “reasonable diligence,” not “maximum feasible diligence.” *Id.* at  
20 653 (citations and quotation marks omitted). The extraordinary circumstances must  
21 have been the cause of an untimely filing. *Pace*, 544 U.S. at 418. “[E]quitable tolling  
22 is available for this reason only when ““extraordinary circumstances beyond a  
23 prisoner’s control make it *impossible* to file a petition on time”” and ““the extraordinary  
24 circumstances” were the *cause* of [the prisoner’s] untimeliness.”” *Bills v. Clark*, 628  
25 F.3d 1092, 1097 (9th Cir. 2010) (citations omitted, emphasis in original). There is no  
26 indication in the petition that Petitioner is entitled to equitable tolling.

1           **Accordingly, Petitioner shall show cause in writing why this action should**  
2 **not be dismissed as being barred by the one-year statute of limitations.**

3 **Petitioner shall file his response to the Court's Order to Show Cause not later**  
4 **than 30 days from the filing date of this Order.**

5           **If Petitioner does not file a response within the time allowed, the action**  
6 **may be dismissed for failure to timely file, and for failure to prosecute.**

7           IT IS SO ORDERED.

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9 DATED: February 19, 2016

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11 ALICIA G. ROSENBERG  
12 United States Magistrate Judge  
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