

1
2
3
4
5
6
7
8
9
10
11

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

12
13
14
15
16
17
18

<p>SHEDRICK LOCKRIDGE, Petitioner, v. DEBBIE ASUNCION, Warden, Respondent.</p>
--

Case No. CV 16-8352 MRW

**ORDER DISMISSING ACTION
WITH PREJUDICE**

19
20
21

The Court grants the Attorney General's unopposed motion to dismiss this habeas action as untimely.

* * *

22
23

1. Petitioner filed this habeas action under 28 U.S.C. § 2254 to challenge his state court conviction for attempted murder and other charges.

24
25

2. According to the Attorney General's submission (Docket # 13), the following dates are relevant to evaluating the timeliness of Petitioner's action:

- 26
27
28
- a. February 11, 2015 – Review denied in state supreme court on direct appeal;

1 5. The Court generally agrees with the Attorney General’s calculation of
2 Petitioner’s filing deadline in this action. Petitioner’s conviction became final in
3 May 2015. That meant that he needed to file his federal case within one year (or
4 May 2016). Instead, just before the expiration of the AEDPA one-year limit, he
5 began seeking habeas relief in state court. Petitioner is likely entitled to a limited
6 amount of statutory tolling for his superior court action.

7 6. However, that tolling (three weeks) would move his federal deadline
8 to early June 2016. The Attorney General correctly explains that Petitioner is not
9 entitled to further tolling due to the independent state court finding that his later
10 actions were untimely – and therefore not properly filed under state law. Pace v.
11 DiGuglielmo, 544 U.S. 408 (2005); Curiel v. Miller, 830 F.3d 864, 864, 868
12 (9th Cir. 2016) (en banc). He missed his extended filing date by five months. The
13 action is untimely.

14 7. Alternatively, though, let’s suppose that the state supreme court
15 decision somehow silently could be construed as finding Petitioner’s action as
16 timely. If so, that ruling could be considered as overruling the appellate court’s
17 timeliness decision. Curiel, 830 F.3d at 869-70. As a result, Petitioner could
18 plausibly be entitled to additional statutory and gap tolling for his federal case.

19 8. But not enough. Even under Petitioner’s best case scenario (that is,
20 this Court reading the state supreme court decision in the most charitable way
21 possible), he’s still two months late. The Court independently calculates that
22 Petitioner could only be entitled to 126 days of tolling from April through August
23 2016. That would extend the federal filing date from May to September 2016.
24 Petitioner still missed that by two months – he didn’t file until November. The
25 action remains untimely.

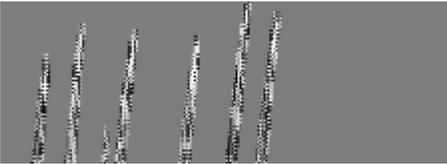
26 9. As an additional basis for dismissal, the Court notes that the Attorney
27 General’s motion is unopposed. Local Rule of Court 7-9 requires a party to file a
28

1 memorandum stating the basis for that party’s opposition to a motion. Local
2 Rule 7-12 states that the “failure to file any required document [] may be deemed
3 consent to the granting or denial of the motion.”

4 10. The Court clearly informed Petitioner of this requirement in previous
5 orders. Petitioner did not file a response that addressed the Attorney General’s
6 argument. Petitioner’s failure to respond to the dismissal motion signifies his
7 consent to the dismissal of the action.

8 Accordingly, for the above reasons, this action is DISMISSED with
9 prejudice under 28 U.S.C. § 2244 and Local Rule 7-12.¹

10 IT IS SO ORDERED.



11
12
13 Dated: June 12, 2017

14 HON. MICHAEL R. WILNER
15 UNITED STATES MAGISTRATE JUDGE

16
17
18
19
20
21
22
23
24
25
26
27
28 ¹ The Court declines to address the Attorney General’s argument regarding the failure to properly exhaust claims in state court.