

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ROBERT MORAN,	}	No. CV 18-3080 JFW (FFM)
Petitioner,		ORDER TO SHOW CAUSE WHY THE PETITION SHOULD NOT BE DISMISSED AS UNTIMELY
v.		
NEIL MCDOWELL,		
Respondent.		

---

On April 9, 2018, petitioner Robert Moran (“petitioner”), a California prisoner, constructively<sup>1</sup> filed a Petition for Writ of Habeas Corpus by a Person in State Custody (the “petition”), pursuant to 28 U.S.C. § 2254, in the Central District of California. (Dkt. 1.) The petition challenges petitioner’s 2014 conviction in the Superior Court of Los Angeles County.

///  
///  
///

---

<sup>1</sup> A pro se petitioner’s relevant filings may be construed as filed on the date they were submitted to prison authorities for mailing, under the prison “mailbox rule” of *Houston v. Lack*, 487 U.S. 266 (1988). Attached to the petition is an envelope indicating that petitioner submitted the petition to prison authorities for mailing on April 9, 2018.

1     **1.     LIMITATIONS PERIOD FOR FEDERAL HABEAS PETITIONS**

2             The present proceedings were initiated after the April 24, 1996, effective  
3     date of the Antiterrorism and Effective Death Penalty Act (“AEDPA”), Pub. L.  
4     No. 104–132, 110 Stat. 1214 (1996). Accordingly, AEDPA’s timeliness  
5     provisions apply, including a one-year limitations period which is subject to both  
6     statutory and equitable tolling. *See* 28 U.S.C. § 2244(d)(1). For those prisoners  
7     whose convictions became final post-AEDPA, the one-year period starts running  
8     from the latest of four alternative dates set forth in 28 U.S.C. § 2244(d)(1)(A)-  
9     (D). *See, e.g., Patterson v. Stewart*, 251 F.3d 1243, 1245–47 (9th Cir. 2001).

10            Because petitioner has not provided any basis to find otherwise, the Court  
11     presumes that Section 2244(d)(1)(A), which governs the start date in most  
12     habeas cases, applies here. Section 2244(d)(1)(A) provides that the one-year  
13     limitations period “shall run from the latest of . . . the date on which the  
14     [petitioner’s conviction] became final by the conclusion of direct review or the  
15     expiration of the time for seeking such review.” Where, as here, the challenged  
16     judgment was affirmed by the state’s highest court, the period of direct review  
17     ends either when the petitioner failed to file a *certiorari* petition in the United  
18     States Supreme Court and the 90-day period for doing so has expired, or when  
19     the Supreme Court has ruled on a filed petition. *See Clay v. United States*, 537  
20     U.S. 522, 527-32 and nn.3-4, 123 S. Ct. 1072, 155 L. Ed. 2d 88 (2003); *Wixom v.*  
21     *Washington*, 264 F.3d 894, 897 (9th Cir. 2001).

22            The petitioner admits that he did not seek a timely review by the California  
23     Supreme Court of the Court of Appeal decision on his habeas petition.<sup>2</sup> Thus,

24            

---

  
25            <sup>2</sup> The Court takes judicial notice of Petitioner’s state court proceedings as  
26     indicated on the California Courts of Appeal official case information website,  
27     found at <http://appellatecases.courtinfo.ca.gov/index.html>. *See Porter v. Ollison*,  
28     620 F.3d 952, 954–55 (9th Cir. 2010) (federal courts may take judicial notice of  
   state court dockets found on the internet). It appears that petitioner filed  
   successive petitions with the state court of appeals, in case numbers B261316,

(continued...)

1 for the purposes of section 2244(d)(1)(A), petitioner’s conviction became final  
2 on April 11, 2016, approximately thirty days after the California Court of Appeal  
3 affirmed his conviction. Accordingly, the one-year limitations period was set to  
4 expire on April 11, 2017. *See Patterson*, 251 F.3d at 1245-47. Because  
5 petitioner did not initiate the current proceedings until April 9, 2018, the present  
6 action is untimely, absent statutory or equitable tolling. *See* 28 U.S.C. §  
7 2244(d)(1); *See Bell v. Barnes*, 2013 WL 5548621, at \*4 (C.D. Cal. Oct. 4, 2013)  
8 (citations omitted) (finding that petition filed one day late is untimely).

9 **2. STATUTORY TOLLING**

10 Title 28 U.S.C. § 2244(d)(2) provides that “[t]he time during which a  
11 properly filed application for state post-conviction or other collateral review with  
12 respect to the pertinent judgment or claim is pending shall not be counted toward  
13 any period of limitation under this subsection.” Here, petitioner filed a state  
14 habeas petition on or about January 14, 2015, approximately three months after  
15 his October 7, 2014 conviction, and it was disposed of by the Court of Appeals  
16 on April 11, 2016. Accordingly, because any statutory tolling amounts to less  
17 than a year, and the federal habeas petition was filed nearly one year after the  
18 expiration of the one-year limitations period for filing this federal habeas  
19 petition, any statutory tolling is insufficient to make this petition timely.

20 **3. EQUITABLE TOLLING**

21 The AEDPA limitations period also may be subject to equitable tolling, if  
22 the petitioner shows that extraordinary circumstances beyond the petitioner’s  
23 control made timely filing of a federal habeas petition impossible and the  
24 petitioner has acted diligently in pursuing his rights. *Holland v. Florida*, 560  
25

26  
27 \_\_\_\_\_  
28 (...continued)  
B276974, and B284310; and did not appeal any of these decisions with the  
California Superior Court.

1 U.S. 631, 649 (2010). The petitioner bears the burden of showing that equitable  
2 tolling is appropriate. *Miranda v. Castro*, 292 F.3d 1063, 1065 (9th Cir. 2002).

3 Here, petitioner has demonstrated neither that any extraordinary  
4 circumstances prevented him from filing a timely petition nor that he diligently  
5 pursued his right to file. Accordingly, petitioner has not shown that he is entitled  
6 to equitable tolling.

7 **4. ORDER TO SHOW CAUSE**

8 Under the allegations and facts of the petition, petitioner has not  
9 demonstrated that he is entitled to a later start date of the limitations period.  
10 Therefore, and because the petition does not demonstrate any basis for tolling the  
11 statute, or for setting aside the one-year limitation, the Court orders petitioner to  
12 show cause in writing within thirty (30) days of the date of this order why the  
13 petition should not be dismissed as time-barred. If petitioner fails to provide a  
14 timely response to this order, the Court will recommend that the petition be  
15 dismissed, with prejudice, as time-barred.

16 IT IS SO ORDERED.

17 DATE: April 23, 2018

18 /S/ FREDERICK F. MUMM  
19 FREDERICK F. MUMM  
20 United States Magistrate Judge  
21  
22  
23  
24  
25  
26  
27  
28