UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LATASHA DIANE WILLIAMS, Petitioner, v. DOBSON-DAVIS, Warden, Respondent.	NO. ED CV 12-135-JST(E) REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This Report and Recommendation is submitted to the Honorable Josephine Staton Tucker, United States District Judge, pursuant to 28 U.S.C. section 636 and General Order 05-07 of the United States District Court for the Central District of California.

PROCEEDINGS

Petitioner filed a "Petition for Writ of Habeas Corpus By a Person in State Custody" on January 27, 2012, bearing a signature date of January 17, 2012. Petitioner filed a First Amended Petition, the operative pleading, on March 9, 2012 ("the Petition"). Respondent

filed a Motion to Dismiss on June 22, 2012, asserting that the Petition is untimely. Petitioner filed a "Motion to Respond Opposition to the Motion of Petition for Writ of Habeas Corpus" on August 6, 2012.

BACKGROUND

A jury found Petitioner guilty of: (1) three counts of attempted voluntary manslaughter in violation of California Penal Code sections 192(a) and 664(a); (2) three counts of assault with a firearm within the meaning of California Penal Code section 245(a)(2); and (3) three counts of discharging a firearm at another person from a motor vehicle in violation of California Penal Code section 12034(c) (see Respondent's Lodgment 1, p. 10; Respondent's Lodgment 3, pp. 1-2; see People v. Williams, 2006 WL 2280187, at *5 (Cal. App. Aug. 9, 2006)). The jury also found true the allegations that: (1) on all counts, Petitioner personally used a firearm within the meaning of California Penal Code sections 12022.5(a)(1) and 12022.53(b); (2) on the attempted manslaughter counts, Petitioner personally and intentionally discharged a firearm within the meaning of California Penal Code section 12022.53(c); (3) on two of the attempted manslaughter counts and two of the assault counts, Petitioner personally inflicted great bodily injury within the meaning of California Penal Code section 12022.7(a); and (4) on two of the discharging counts, Petitioner personally and intentionally discharged a firearm causing great bodily injury within the meaning of California Penal Code section 12022.53(d) (see Respondent's Lodgment 1, p. 11; see People v. Williams, 2006 WL 2280187, at *5). Petitioner received a sentence of 61 years and 8

months to life (see Respondent's Lodgment 1, p. 11; Respondent's Lodgment 3, pp. 9-12; see People v. Williams, 2006 WL 2280187, at *6).

On August 9, 2006, the Court of Appeal issued an opinion striking all enhancements imposed pursuant to California Penal Code sections 12053(b), (c) and/or (e)[1] and vacating the stay on the section 12022.5(a)(1) enhancement on Count 9, but otherwise affirming the judgment (see Respondent's Lodgment 1; see People v. Williams, 2006 WL 2280187 (Cal. App. Aug. 9, 2006)). The Court of Appeal ordered the Superior Court to prepare an amended and corrected abstract of judgment (see Respondent's Lodgment 1, at pp. 1, 24; see People v. Williams, 2006 WL 2280187, at *1, 12). On August 18, 2006, the Superior Court corrected Petitioner's sentence on remand (Respondent's Lodgment 3, pp. 4-5).

Petitioner filed a petition for review in the California Supreme Court on September 12, 2006 (Respondent's Lodgment 2). The California Supreme Court denied this petition on October 18, 2006, without prejudice to any relief to which Petitioner might be entitled after the United States Supreme Court decided the then-pending case of Cunningham v. California (Respondent's Lodgment 2).[2]

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[1] Although the sentencing court did not impose any subsection (e) enhancements, the original abstract of judgment erroneously reflected such enhancements.

[2] On January 22, 2007, the United States Supreme Court issued its decision in Cunningham v. California, 549 U.S. 270 (2007) ("Cunningham").

In 2007 and 2008, Petitioner sent various documents to the Superior Court. Petitioner filed a motion for modification of sentence in the Superior Court on June 28, 2007 (First Amended Petition, Ground Three attachment; Respondent's Lodgment 3, p. 4). Petitioner sent the Superior Court a letter dated October 11, 2007, inquiring whether the court had received the June 28, 2007 motion (First Amended Petition, Ground Three attachment; Respondent's Lodgment 3, p. 4). The Superior Court received this letter on October 15, 2007 (id.). On December 10, 2007, Petitioner sent the Superior Court a letter or motion purportedly seeking relief under Cunningham, which the court received on December 13, 2007 (First Amended Complaint, Ground Three attachment; Respondent's Lodgment 3, p. 4). On January 2, 2008, the Superior Court sent a copy of Petitioner's December 2007 letter to the "Conflict Panel & DA for handling" (id.). On February 1, 2008, the Superior Court received a letter from Plaintiff, dated January 21, 2008, regarding Petitioner's "Cunningham motion" (Respondent's Lodgment 3, pp. 3-4). On February 1, 2008, the Superior Court sent Petitioner a letter stating that the judge had ordered Petitioner's December 13, 2007 "Motion" to be "forwarded to the Conflict Panel and District Attorney for handling" (Respondent's Lodgment 4). On July 30, 2008, the Superior Court forwarded to the Conflict Panel another letter from Petitioner, dated July 22, 2008 (Respondent's Lodgment 3, p. 3).

Almost two years later, on May 11, 2010, Petitioner filed her first habeas corpus petition in the Superior Court, bearing a signature date of April 29, 2010 (Respondent's Lodgments 5, 6). On May 25, 2010, the Superior Court denied the petition as untimely and

as lacking factual support (Respondent's Lodgment 6). Petitioner filed a second habeas corpus petition in the Superior Court on July 29, 2010, which the court denied on August 3, 2010 as a "serial petition" alleging no new facts (Respondent's Lodgment 7).[3] Petitioner filed a document in the Superior Court on August 30, 2010, which court construed as a motion for reconsideration, denying such motion on September 3, 2010 (Respondent's Lodgment 7). Petitioner filed a third habeas corpus petition in the Superior Court on October 5, 2010, which the court denied on October 7, 2010 as a serial petition alleging no new facts (Respondent's Lodgment 7). Petitioner filed a document in the Superior Court on December 9, 2010, which the court construed as a subsequent serial petition and denied (Respondent's Lodgment 7). Petitioner filed another petition in the Superior Court on February 25, 2011, which the court denied on March 2, 2011 as a serial petition alleging no new facts (Respondent's Lodgment 7). Petitioner filed another petition in the Superior Court on March 10, 2011, which the court denied on March 15, 2011 as a serial petition alleging no new facts (Respondent's Lodgment 7). Petitioner filed another habeas petition in the Superior Court on April 25, 2011, which the court denied on April 26, 2011 as a serial petition alleging no new facts (Respondent's Lodgment 7).

In the meantime, Petitioner filed a habeas corpus petition in the California Court of Appeal on March 18, 2011, which that court denied summarily on May 9, 2011 (Respondent's Lodgments 8, 10). Petitioner filed a second habeas corpus petition in the Court of Appeal on

[3] Respondent's Lodgment 7 consists of several different documents.

May 18, 2011, which that court denied summarily on May 24, 2011 (Respondent's Lodgment 11; see docket in In re Latasha Williams, California Court of Appeal case number E053588).[4]

Petitioner filed a habeas corpus petition in the California Supreme Court on July 14, 2011, which that court denied on November 22, 2011 with a citation to In re Robbins 18 Cal. 4th 770, 77 Cal. Rptr. 2d 153, 959 P.2d 311 (1998), signifying that the court deemed the petition to be untimely (Respondent's Lodgment 12).[5]

PETITIONER'S CONTENTIONS

Petitioner contends:

Ground One

The trial court allegedly denied Petitioner the right to a fair and impartial jury, assertedly by refusing to question and dismiss a juror whom Petitioner allegedly knew; the prosecutor allegedly committed misconduct, purportedly by begging the court to sentence Petitioner to life.

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[4] The Court takes judicial notice of the docket in In re Latasha Williams, California Court of Appeal case number E053588). See Mir v. Little Company of Mary Hosp., 844 F.2d 646, 649 (9th Cir. 1988) (court may take judicial notice of court records).

[5] See Walker v. Martin, 131 S. Ct. 1120, 1124 (2011); Gaston v. Palmer, 447 F.3d 1165 (9th Cir. 2006), cert. denied, 549 U.S. 1134 (2007); Bennett v. Mueller, 322 F.3d 573, 578-79 (9th Cir., cert. denied, 540 U.S. 938 (2003).

Ground Two

The court reporter allegedly gave jurors an exhibit, Exhibit No. 103, which the court purportedly had ruled inadmissible; the court allegedly erred in denying a motion for a new trial based on the jury's asserted consideration of this exhibit.

Ground Three

Petitioner allegedly "has been diligent in seeking relief."

Ground Four

Petitioner "was not given proper amended abstract in order to properly present her case, which created an extraordinary circumstance"; Petitioner allegedly never received notice of the trial court's asserted order requiring the clerk to prepare an amended abstract of judgment, or of the amended abstract of judgment, until May 24, 2010, when Petitioner's mother purported obtained a "case print" from the Internet.

Ground Five

The trial court allegedly refused to excuse Juror No. 9 for cause after Petitioner said Petitioner knew Juror No. 9 and had personal information concerning that juror; Juror No. 9 allegedly told Petitioner's counsel, purportedly within the hearing of the prosecutor, that the jury had based its verdict on Exhibit 103.

Ground Six

Petitioner's sentence assertedly was unlawful because: (1) the court allegedly sentenced Petitioner on Count 9, which the court assertedly had stricken; (2) the sentences on Counts 7, 8 and 9 allegedly were improper because Petitioner purportedly could only be punished for one offense; (3) the evidence allegedly did not support the finding of great bodily injury; (4) the conclusion that Petitioner fired a gun supposedly was "inconclusive" because Petitioner assertedly was never given a gunshot residue test; and (5) the section 12022.53 enhancement allegedly did not apply to Petitioner.

Ground Seven

The sentencing court allegedly violated the Eighth Amendment, purportedly by sentencing Petitioner to double punishment on all counts.

Ground Eight

Petitioner's trial counsel allegedly rendered ineffective assistance, assertedly by: (1) not meeting counsel's burden of proof at the preliminary hearing; (2) not exercising available peremptory challenges; (3) failing to have Petitioner take a gunshot residue test; and (4) failing to investigate evidence that allegedly would have shown that Petitioner assertedly did not possess a gun and allegedly was not the shooter.

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Ground Nine

The court allegedly coerced the verdict following the jury's declaration of deadlock.

Ground Ten

The evidence allegedly was insufficient to support the firearm enhancements.

Ground Eleven

Police allegedly questioned Petitioner although she assertedly was a juvenile who purportedly could not give consent to interrogation unless an adult or guardian was present; the interrogating officers allegedly would not allow Petitioner to call her parents and would not allow her to leave unless she "gave them a story."

DISCUSSION

The "Antiterrorism and Effective Death Penalty Act of 1996" ("AEDPA"), signed into law April 24, 1996, amended 28 U.S.C. section 2244 to provide a one-year statute of limitations governing habeas petitions filed by state prisoners:

> (d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The

limitation period shall run from the latest of –

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

"AEDPA's one-year statute of limitations in § 2244(d)(1) applies to each claim in a habeas application on an individual basis."

Mardesich v. Cate, 668 F.3d 1164, 1171 (9th Cir. 2012).

Petitioner's conviction became final on January 16, 2007, upon the expiration of 90 days from the California Supreme Court's denial of Petitioner's petition for review. See Jimenez v. Quarterman, 129 S. Ct. 681, 686 (2009) ("direct review cannot conclude for purposes of § 2244(d)(1)(A) until the availability of direct appeal to the state courts, [citation], and to this Court, [citation] has been exhausted"); Bowen v. Roe, 188 F.3d 1157, 1159 (9th Cir. 1999) (period of "direct review" after which state conviction becomes final for purposes of section 2244(d)(1) includes the 90-day period for filing a petition for certiorari in the United States Supreme Court). Therefore, the statute of limitations commenced running on January 17, 2007, unless subsections B, C, or D of 28 U.S.C. section 2244(d)(1) furnish a later accrual date than January 16, 2007. See Patterson v. Stewart, 251 F.3d 1243, 1246 (9th Cir.), cert. denied, 534 U.S. 978 (2001); see also Porter v. Ollison, 620 F.3d 952, 958 (9th Cir. 2010) (AEDPA statute of limitations is not tolled between the conviction's finality and the filing of the first state collateral challenge).

Subsection B of section 2244(d)(1) is inapplicable. Petitioner does not allege, and the record does not show, that any illegal conduct by the state or those acting for the state "made it impossible for [her] to file a timely § 2254 petition in federal court." See Ramirez v. Yates, 571 F.3d 993, 1000-01 (9th Cir. 2009).

Subsection C of section 2244(d)(1) is also inapplicable. Petitioner does not assert any claim based on a constitutional right

"newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review." See Dodd v. United States, 545 U.S. 353, 360 (2005) (construing identical language in section 2255 as expressing "clear" congressional intent that delayed accrual inapplicable unless the United States Supreme Court itself has made the new rule retroactive); Tyler v. Cain, 533 U.S. 656, 664-68 (2001) (for purposes of second or successive motions under 28 U.S.C. section 2255, a new rule is made retroactive to cases on collateral review only if the Supreme Court itself holds the new rule to be retroactive); Peterson v. Cain, 302 F.3d 508, 511-15 (5th Cir. 2002), cert. denied, 537 U.S. 1118 (2003) (applying anti-retroactivity principles of Teague v. Lane, 489 U.S. 288 (1989), to analysis of delayed accrual rule contained in 28 U.S.C. section 2244(d)(1)(C)).[6]

Section 2244(d)(1)(D) does not furnish an accrual date later than January 16, 2007 for Petitioner's claims. Under section 2244(d)(1)(D), "[t]ime begins when the prisoner knows (or through diligence could discover) the important facts, not when the prisoner recognizes their legal significance." Hasan v. Galaza, 254 F.3d 1150, 1154 n.3 (9th Cir. 2001) (citation and internal quotations omitted). "Due diligence does not require 'the maximum feasible diligence,' but it does require reasonable diligence in the circumstances." Ford v.

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[6] In reference to Ground Eleven, Petitioner invokes United States Supreme Court's decision in J.D.B. v. North Carolina, 131 S. Ct. 2394 (2011) ("J.D.B."). The Supreme Court has not made the rule of J.D.B. retroactive to cases on collateral review. Thus, the rule of J.D.B. can neither delay accrual of the statute of limitations nor support the merits of Ground Eleven. See, e.g., Gray v. Dormire, 2011 WL 6115812, at *1 (E.D. Mo. Dec. 8, 2011).

Gonzalez, 683 F.3d 1230, 1235 (9th Cir. 2012) (quoting Schlueter v. Varner, 384 F.3d 69, 74 (3d Cir. 2004), cert. denied, 544 U.S. 1037 (2005)). Section 2244(d)(1)(D) applies "only if vital facts could not have been known by the date the appellate process ended." Id. at 1235 (citations and internal quotations omitted). "The 'due diligence' clock starts ticking when a person knows or through diligence could discover the vital facts, regardless of when their legal significance is actually discovered." Id. (citations omitted). "Although section 2244(d)(1)(D)'s due diligence requirement is an objective standard, a court also considers the petitioner's particular circumstances." Id. (citations omitted).

Petitioner plainly knew or should have known, by January 16, 2007, the "vital facts" which form the bases for the claims raised in Grounds One, Two, Five, Six, Seven, Eight, Nine, Ten and Eleven. The claim raised in Ground Three is not a claim for federal habeas relief, but rather appears to be an argument for statutory or equitable tolling of the habeas statute of limitations.

It is unclear whether the claim raised in Ground Four is simply an argument for equitable tolling based on alleged "extraordinary circumstances" or a claim for federal habeas relief. To the extent that Ground Four asserts a claim for federal habeas relief based on Petitioner's allegedly delayed knowledge of an amended abstract of judgment, Petitioner knew or should have known at least by January 16, 2007, in the exercise of due diligence, that the trial court had issued an amended abstract of judgment. In the Court of Appeal's opinion, issued on August 9, 2006, the Court of Appeal directed the

trial court to prepare an amended and corrected abstract of judgment (see Respondent's Lodgment 1, pp. 1, 24; People v. Williams, 2010 WL 2280187, at *1, 12). The Superior Court's docket shows that, on August 18, 2006, the Superior Court resentenced Petitioner on remand and directed the court clerk to prepare an amended abstract of judgment (Respondent's Lodgment 3, pp. 4-5). Yet, Petitioner apparently did not inquire concerning any such amended abstract of judgment until well over three years later, when Petitioner's mother allegedly obtained a "case print" over the Internet on May 25, 2010. Even if Petitioner did not have access to the Internet in prison, she has failed to prove she could not have asked someone, such as her mother, to attempt to obtain the amended abstract of judgment much earlier. In sum, Petitioner is not entitled to delayed accrual on Ground Four.[7]

As previously indicated, time begins under section 2244(d)(1)(D) "when the prisoner knows (or through diligence could discover) the important facts. . . ." Hasan v. Galaza, 254 F.3d at 1154 n.3. The running of the statute of limitations does not await the issuance of judicial decisions that might help would-be petitioners recognize the

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[7] Even assuming arguendo that Petitioner could not have known, by January 16, 2007, that the Superior Court had issued an amended abstract of judgment, the Superior Court's docket shows that, on May 19, 2008, the Superior Court sent a "case print" to Petitioner (Respondent's Lodgment 3, p. 3). That case print would have included the Superior Court's August 18, 2006 order directing the clerk to prepare an amended abstract of judgment. Thus, Petitioner knew or should have known, within a few days after May 19, 2008, that the Superior Court had issued an amended abstract of judgment. Even assuming arguendo that Ground Four accrued at the end of May 2008, for the reasons discussed below, this claim is still untimely.

legal significance of particular predicate facts. Singer v. Director of Corrections, 2010 WL 1444479, at *3 (C.D. Cal. March 4, 2010), adopted, 2010 WL 1444475 (C.D. Cal. April 2, 2010) (Cunningham decision did not provide "the factual predicate" for the petitioner's challenge to his sentence); Sharp v. Martel, 2009 WL 789645, at *3-4 (S.D. Cal. March 17, 2009) (same); see also Shannon v. Newland, 410 F.3d 1083, 1089 (9th Cir. 2005), cert. denied, 546 U.S. 1171 (2006) (intervening state court decision establishing abstract proposition of law arguably helpful to the petitioner does not constitute a "factual predicate" under section 2244(d)(1)(D)). Thus, even if the J.D.B. decision here applied (and it does not), accrual of the statute of limitations would not date from the J.D.B. decision.

Therefore, the statute of limitations began running on January 17, 2007 and expired on January 16, 2008. See Patterson v. Stewart, 251 F.3d 1243, 1246 (9th Cir.), cert. denied, 534 U.S. 978 (2001). Petitioner constructively filed the present Petition on January 17, 2012, four years after the expiration of the limitations period.[8] Absent tolling, the Petition is untimely.

Section 2244(d)(2) tolls the statute of limitations during the pendency of "a properly filed application for State post-conviction or other collateral review." As indicated above, commencing in June of 2007 and continuing to July of 2008, Petitioner submitted a series of motions or letters to the Superior Court, at least some of which appear to have asserted a Cunningham claim. The Superior Court did

[8] The Court assumes arguendo Petitioner "filed" her first federal petition on its signature date of January 17, 2012.

not rule on any of the motions or letters, but sent at least some of them to the Conflict Panel and District Attorney. None of these motions or letters appear to have been a "properly filed" "application for State post-conviction or other collateral review." See Artuz v. Bennett, 531 U.S. 4, 8 (2000) (an application is "properly filed" within the meaning of section 2244(d)(2) when "it is delivered to, and accepted by, the appropriate court officer for placement in the official record" in accordance with "the applicable laws and rules governing filings."); Zepeda v. Walker, 581 F.3d 1013, 1016-19 (9th Cir. 2009) (petition stamped "received" by court clerk, but which was not filed in the court records due to lack of verification, was not "properly filed" under section 2244(d)(2)).

Moreover, even assuming arguendo that Petitioner is entitled to statutory tolling during the period from January 28, 2007 (when Petitioner submitted her first "motion") through July 30, 2008 (when the Superior Court forwarded Petitioner's last letter to the Conflict Panel and District Attorney), any such tolling ended no later than July 30, 2008. Petitioner did not file the present Petition within one year of that date.

Petitioner is not entitled to statutory tolling between July 30, 2008 and the May 11, 2010 filing of Petitioner's first habeas corpus petition in Superior Court. This delay of nearly two years precludes any "gap tolling." See, e.g., Evans v. Chavis, 546 U.S. 189, 201 (2006) (finding "no authority suggesting, . . . [or] any convincing reason to believe, that California would consider an unjustified or unexplained 6-month filing delay 'reasonable.'"); Gaston v. Palmer,

447 F.3d 1165, 1167 (9th Cir. 2006), cert. denied, 549 U.S. 1134 (2007) (California petitioner not entitled to gap tolling for unexplained delays of 10, 15, and 18 months). In any event, Petitioner's first habeas corpus petition, which the Superior Court denied as untimely, could not support statutory tolling. See Pace v. DiGuglielmo, 544 U.S. 408, 413 (2005) (where the state court rules a petition untimely, that is the "end of the matter" - the petition was not "properly filed" and tolling is unavailable).

Petitioner filed subsequent habeas corpus petitions in state court in 2010 and 2011. These petitions, all of which were filed long after the statute of limitations expired, did not revive the statute or otherwise justify statutory tolling. See Ferguson v. Palmateer, 321 F.3d 820, 823 (9th Cir.), cert. denied, 540 U.S. 924 (2003) ("section 2244(d) does not permit the reinitiation of the limitations period that has ended before the state petition was filed"); Jiminez v. Rice, 276 F.3d 478, 482 (9th Cir. 2001), cert. denied, 538 U.S. 949 (2003) (filing of state habeas petition "well after the AEDPA statute of limitations ended" does not affect the limitations bar); Webster v. Moore, 199 F.3d 1256, 1259 (11th Cir.), cert. denied, 531 U.S. 991 (2000) ("[a] state-court petition . . . that is filed following the expiration of the limitations period cannot toll that period because there is no period remaining to be tolled"); see also Nino v. Galaza, 183 F.3d at 1006 (statute of limitations is not tolled between conviction's finality and the filing of the first state collateral challenge). The 2011 petition filed with the California Supreme Court also cannot support statutory tolling for the additional reason that the Supreme Court denied the petition as untimely. See Allen v.

Siebert, 552 U.S. 3, 7 (2007) (citations and quotations omitted); Carey v. Saffold, 536 U.S. 214, 226 (2002); Lakey v. Hickman, 633 F.3d 782, 785-86 at *4 (9th Cir.), cert. denied, 131 S. Ct. 3039 (2011); White v. Martel, 601 F.3d 882, 883 (9th Cir.), cert. denied, 131 S. Ct. 332 (2010).

AEDPA's statute of limitations is subject to equitable tolling "in appropriate cases." Holland v. Florida, 130 S. Ct. 2549, 2560 (2010) (citations omitted). "[A] 'petitioner' is entitled to 'equitable tolling' only if he shows '(1) that he has been pursuing his claims diligently, and (2) that some extraordinary circumstance stood in his way' and prevented timely filing." Id. at 2562 (quoting Pace v. DiGuglielmo, 544 U.S. at 418); see also Lawrence v. Florida, 549 U.S. 327, 336 (2007). The threshold necessary to trigger equitable tolling "is very high, lest the exceptions swallow the rule." Waldron-Ramsey v. Pacholke, 556 F.3d 1008, 1011 (9th Cir.), cert. denied, 130 S. Ct. 244 (2009) (citations and internal quotations omitted). Petitioner bears the burden to show equitable tolling. See Zepeda v. Walker, 581 F.3d at 1019. Petitioner must show that the alleged "extraordinary circumstances" were the "cause of [the] untimeliness." Roy v. Lampert, 465 F.3d 964, 969 (9th Cir. 2006), cert. denied, 549 U.S. 1317 (2007) (brackets in original; quoting Spitsyn v. Moore, 345 F.3d 796, 799 (9th Cir. 2003)). Petitioner must show that an "external force" caused the untimeliness, rather than "oversight, miscalculation or negligence." Waldron-Ramsey v. Pacholke, 556 F.3d at 1011 (citation and internal quotations omitted).

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Petitioner contends that she has been "diligent" in pursuing her claims, asserting that she did not know about the amended abstract of judgment until her mother obtained a case print in May of 2010 (First Amended Petition, Ground Three and Ground Four attachments). As discussed above, however, Petitioner has failed to show diligence in regard to the amended abstract of judgment. See Tolliver v. McDonald, 2009 WL 2525133, at *6 (C.D. Cal. Aug. 10, 2009) (delay in obtaining copy of abstract of judgment did not warrant equitable tolling where plaintiff failed to establish diligence). Furthermore, Petitioner has not shown how the alleged absence of an amended abstract of judgment was "the cause of [her] untimeliness." See Roy v. Lampert, 465 F.3d at 969; see also Wise v. Dexter, 2010 WL 5347557, at *7 (C.D. Cal. Oct. 12, 2010), adopted, 2010 WL 5350357 (C.D. Cal. Dec. 21, 2010) (alleged failure contemporaneously to receive transcripts and amended abstract of judgment did not proximately cause failure to pursue habeas claim in federal court in a timely fashion).

Petitioner references letters she or her mother wrote to Senator Boxer, members of the California legislature, the ACLU, the Governor's office, the San Bernardino County Grand Jury and others. This fruitless and largely misdirected correspondence does not establish Petitioner's diligence or entitle Petitioner to equitable tolling. See, e.g., Martin v. Franklin, 2009 WL 5067514, at *4 (N.D. Okla. Dec. 16, 2009) ("letter-writing and telephone campaign" by petitioner's mother did not establish diligence for purposes of equitable tolling); Morse v. Quarterman, 2009 WL 585895, at *4 (N.D. Tex. March 6, 2009) ("a letter-writing campaign, no matter how aggressive, will not ordinarily support an argument for equitable

tolling").

Petitioner makes vague and conclusory references to lockdowns and restrictions on law library access. Petitioner has failed to demonstrate that any alleged lockdowns or restrictions on law library access prevented the filing of a timely federal petition. See Ramirez v. Yates, 571 F.3d 993, 998 (9th Cir. 2009) (ordinary prison limitations on library access due to confinement in administrative segregation insufficient to justify equitable tolling); Roy v. Lampert, 465 F.3d at 969 (to warrant equitable tolling, petitioner must show that alleged "extraordinary circumstances" were the "cause of the untimeliness"); Taylor v. Yates, 2007 WL 1125696, *2 (E.D. Cal. Apr. 16, 2007) ("petitioner has not made any attempt to link lockdowns and limited law library hours to his inability timely to file his petition"); Rodriguez v. Evans, 2007 WL 951820, *6 (N.D. Cal. Mar. 28, 2007) ("even during lockdown, prisoners are not prohibited from working on legal matters or from keeping any legal materials in their cells. Emergency library services are provided via paging if a lockdown or other situation curtails inmate movement for more than ten days"); Corrigan v. Barbery, 371 F. Supp. 2d 325, 330 (W.D.N.Y. 2005) (lockdowns do not by themselves qualify as extraordinary circumstances warranting equitable tolling).

Petitioner alleges confusion regarding the status of the enhancement on Count 9. Any alleged confusion is completely irrelevant to most of Petitioner's claims. Even as to any sentencing claim targeting Count 9, Petitioner long knew the vital facts that would be the basis for any such sentencing claim (through attendance

at the original sentencing hearing and knowledge of the Court of Appeal's opinion modifying sentence).

Petitioner alleges she was denied copies of police reports and transcripts of the sentencing. Again, the alleged lack of these documents did not prevent timely filing of any of Petitioner's federal claims. Cf. Jurado v. Burt, 337 F.3d 638, 644 (6th Cir. 2003) ("AEDPA does not convey a right to an extended delay while a habeas petitioner gathers every possible scrap of evidence that might support his claim"); Wise v. Dexter, 2010 WL 5347557, at *5, 7 (C.D. Cal. Oct. 12, 2010), adopted, 2010 WL 5350357 (C.D. Cal. Dec. 21, 2010) (lack of sentencing transcripts neither delays accrual of claim nor justifies equitable tolling).

Petitioner alleges that her attorney was disbarred and so could not help her. Petitioner's alleged lack of legal assistance and lack of legal sophistication are not extraordinary circumstances warranting equitable tolling. See Rasberry v. Garcia, 448 F.3d 1150, 1154 (9th Cir. 2006); Oetting v. Henry, 2005 WL 1555941, at *____ (E.D. Cal. June 24, 2005), adopted, 2005 WL 2000977 (E.D. Cal. Aug. 18, 2005); see also Pennsylvania v. Finley, 481 U.S. 551, 555 (1987) (there exists no constitutional right to counsel in collateral review proceedings).

Petitioner complains that the Superior Court eventually told her to stop filing documents with that court. Even if improper, this directive did not prevent Petitioner from filing whatever she wished to file in the California appellate courts or in this federal court.

Petitioner also appears to complain that the Superior Court delayed providing records to counsel for Respondent during the present federal litigation. Any such delay obviously had nothing to do with Petitioner's failure timely to institute this litigation.

RECOMMENDATION

For the reasons discussed above,[9] IT IS RECOMMENDED that the Court issue an order: (1) accepting and adopting this Report and Recommendation; and (2) denying and dismissing the Petition with prejudice.

DATED: August 22, 2012.

_____/S/_____
CHARLES F. EICK
UNITED STATES MAGISTRATE JUDGE

[9] The Court has considered and rejected all arguments Petitioner has made in attempted avoidance of the bar of limitations. The Court has discussed Petitioner's principal arguments herein.

NOTICE

Reports and Recommendations are not appealable to the Court of Appeals, but may be subject to the right of any party to file objections as provided in the Local Rules Governing the Duties of Magistrate Judges and review by the District Judge whose initials appear in the docket number. No notice of appeal pursuant to the Federal Rules of Appellate Procedure should be filed until entry of the judgment of the District Court.

If the District Judge enters judgment adverse to Petitioner, the District Judge will, at the same time, issue or deny a certificate of appealability. Within twenty (20) days of the filing of this Report and Recommendation, the parties may file written arguments regarding whether a certificate of appealability should issue.