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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ROBERT LOUIS GRAYSON,  Petitioner,  v.  WARDEN FRED FIGUEROA,  Respondent.	} } } } } } } } } } } }	No. CV 16-1504 CAS (FFM)  ORDER TO SHOW CAUSE WHY PETITION SHOULD NOT BE DISMISSED AS TIME-BARRED
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On July 11, 2016, Petitioner Robert Louis Grayson (“Petitioner”), a California prisoner proceeding *pro se*, filed a Petition for Writ of Habeas Corpus by a Person in State Custody (“Petition”), pursuant to 28 U.S.C. § 2254. (Dkt. No. 1.) The Petition challenges Petitioner’s conviction and sentence for a 2012 conviction for burglary. (Pet. at 2.)<sup>1</sup>

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

The present proceedings were initiated after the April 24, 1996, effective date of the Antiterrorism and Effective Death Penalty Act (“AEDPA”), Pub. L. No. 104–132, 110 Stat. 1214 (1996). Accordingly, AEDPA’s timeliness

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<sup>1</sup>All citations to filings in this case refer to the pagination provided by the Court’s electronic docket.

1 provisions apply, including a one-year limitations period which is subject to both  
2 statutory and equitable tolling. *See* 28 U.S.C. § 2244(d)(1). For those prisoners  
3 whose convictions became final post-AEDPA, the one-year period starts running  
4 from the latest of four alternative dates set forth in 28 U.S.C. § 2244(d)(1)(A)-  
5 (D). *See, e.g., Patterson v. Stewart*, 251 F.3d 1243, 1245–47 (9th Cir. 2001).

6 Section 2244(d)(1)(A) provides that the one-year limitations period “shall  
7 run from the latest of . . . the date on which the [petitioner’s conviction] became  
8 final by the conclusion of direct review or the expiration of the time for seeking  
9 such review.” If a petitioner’s conviction is affirmed by an intermediate appellate  
10 court and he does not appeal that decision to the state’s highest court, his  
11 conviction becomes final for the purposes of section 2244(d)(1)(A) when the  
12 period for seeking review from the state’s highest court expires. *Wixom v.*  
13 *Washington*, 264 F.3d 894, 897 (9th Cir. 2001). In California, a petitioner’s  
14 period for seeking review from the California Supreme Court expires forty days  
15 after the Court of Appeal decision is filed. *See* Cal.R. Ct. 8.264(b)(1) (“[A] Court  
16 of Appeal decision . . . is final in that court 30 days after filing.”); Cal. R. Ct.  
17 8.500(e)(1) (“A petition for review must be . . . filed within 10 days after the  
18 Court of Appeal decision is final in that court.”).

19 The California Court of Appeal decision affirming Petitioner’s conviction  
20 was filed on June 21, 2013.<sup>2</sup> Petitioner admits that he did not file a petition for  
21 direct review with the California Supreme Court. (Pet. at 3.) Official California  
22 court records confirm Petitioner’s admission. Thus, for the purposes of section  
23 2244(d)(1)(A), Petitioner’s conviction became final forty days after June 21,

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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).

1 2013, the day Petitioner’s conviction was affirmed by the California Court of  
2 Appeal. *See Wixom*, 264 F.3d at 897; Cal. R. Ct. 8.264(b)(1), 8.500(e)(1).  
3 Accordingly, the one-year limitations period expired on July 31, 2014. *See*  
4 *Patterson*, 251 F.3d at 1245–47. Because Petitioner did not initiate the current  
5 proceedings until July 11, 2016, the present action is untimely, absent statutory or  
6 equitable tolling. *See* 28 U.S.C. § 2244(d)(1); Fed. R. Civ. Proc. 6(a).

## 7 **2. STATUTORY TOLLING**

8 Title 28 U.S.C. § 2244(d)(2) provides that “[t]he time during which a  
9 properly filed application for state post-conviction or other collateral review with  
10 respect to the pertinent judgment or claim is pending shall not be counted toward  
11 any period of limitation under this subsection.” However, a petitioner is not  
12 entitled to statutory tolling if he filed his initial state habeas petition after the one-  
13 year federal limitations period had expired. *Ferguson v. Palmateer*, 321 F.3d  
14 820, 823 (9th Cir. 2003) (holding that 28 U.S.C. § 2244(d) “does not permit the  
15 reinitiation of the limitations period that has ended before the state petition was  
16 filed”).

17 Petitioner states that he did not initiate any state habeas proceedings until  
18 sometime in January 2016 (Pet. at 3–4), more than a year after the federal one-  
19 year limitations period had expired. Because § 2244(d) “does not permit the  
20 reinitiation of the limitations period,” Petitioner is not entitled to statutory tolling  
21 in this case. *See Ferguson*, 321 F.3d at 823.

## 22 **3. EQUITABLE TOLLING**

23 The AEDPA limitations period also may be subject to equitable tolling, if a  
24 petitioner shows that extraordinary circumstances beyond the petitioner’s control  
25 made timely filing of a federal habeas petition impossible *and* the petitioner has  
26 acted diligently in pursuing his rights. *Holland v. Florida*, 560 U.S. 631, 649  
27 (2010). The petitioner bears the burden of showing that equitable tolling is  
28 appropriate. *Miranda v. Castro*, 292 F.3d 1063, 1065 (9th Cir. 2002).

