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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

STEVEN DESISTO,)	Case No. EDCV 18-0537-FMO (JEM)
)	
Petitioner,)	
)	ORDER SUMMARILY DISMISSING
v.)	ACTION WITHOUT PREJUDICE
)	
T. LEMON,)	
)	
Respondent.)	

On March 16, 2018, Steven DeSisto (“Petitioner”), a prisoner in state custody proceeding pro se, filed a request for an extension of time to file a petition for writ of habeas corpus (“Request”). It appears that Petitioner seeks this extension to avoid the one-year statute of limitations set forth in 28 U.S.C. § 2244(d)(1). Petitioner states that he did not receive notice of the California Supreme Court’s denial of his petition for review for several months and, therefore, he is entitled to equitable tolling of the statute of limitations and he needs additional time to prepare his federal habeas petition. Petitioner does not give any information regarding the nature of his habeas claims.

For the reasons set forth below, the Request is denied and this matter is dismissed without prejudice.

1 **DISCUSSION**

2 **I. Duty to Screen**

3 This Court has a duty to screen habeas corpus petitions. See Rules Governing §
4 2254 Cases in the United States District Courts, Rule 4 Advisory Committee Notes. Rule 4
5 requires a district court to examine a habeas corpus petition, and if it plainly appears from
6 the face of the petition and any annexed exhibits that the petitioner is not entitled to relief,
7 the judge shall make an order for summary dismissal of the petition. Id.; see also Local
8 Rule 72-3.2.

9 **II. The Court Lacks Jurisdiction Over This Matter**

10 “The exercise of judicial power under Art. III of the Constitution depends on the
11 existence of a case or controversy,’ and ‘a federal court [lacks] the power to render advisory
12 opinions.” U.S. Nat’l Bank of Oregon v. Independent Ins. Agents of America, Inc., 508 U.S.
13 439, 446 (1993) (quoting Preiser v. Newkirk, 422 U.S. 395, 401 (1975)); see also Flast v.
14 Cohen, 392 U.S. 83, 94 (1968) (“The jurisdiction of federal courts is defined and limited by
15 Article II of the Constitution. . . . [T]he judicial power of federal courts is constitutionally
16 restricted to ‘cases’ and ‘controversies.’”).

17 Petitioner has not filed a federal habeas petition challenging his conviction or
18 sentence. There is no concrete dispute for the Court to adjudicate. Petitioner essentially
19 seeks an advisory opinion regarding the potential timeliness of any federal habeas petition
20 that he might file in the future, which the Court lacks the authority to issue. See Calderon v.
21 Ashmus, 523 U.S. 740, 746-748 (1998) (no justiciable question where petitioners seek
22 advance ruling on statute of limitations defense; actual “controversy” in 28 U.S.C. § 2254
23 action is whether petitioner is entitled to have his state-imposed conviction or sentence set
24 aside).

25 If Petitioner files a federal habeas petition in the future, and if the respondent
26 challenges the timeliness of that petition, Petitioner may choose to seek equitable tolling of
27 the limitations period in light of his allegations regarding lack of notice of the California
28 Supreme Court’s order denying review. The one-year statute of limitations set forth in 28

1 U.S.C. § 2244(d)(1) is subject to equitable tolling if a petitioner can demonstrate “(1) that he
2 has been pursuing his rights diligently, and (2) that some extraordinary circumstances stood
3 in his way’ and prevented timely filing.” Holland v. Florida, 560 U.S. 631, 651-52 (2010)
4 (quoting Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005)). However, the Court cannot
5 determine whether Petitioner would be entitled to equitable tolling at this stage of the
6 proceedings.

7 Thus, the Petition should be dismissed without prejudice for lack of jurisdiction
8 because Petitioner has not established the existence of a case or controversy within the
9 meaning of Article III.

10 **III. A Certificate of Appealability Is Denied**

11 Pursuant to Rule 11 of the Rules Governing Section 2254 cases, the Court “must
12 issue or deny a certificate of appealability when it enters a final order adverse to the
13 applicant.” For the aforementioned reasons, the Court concludes that Petitioner has not
14 made a substantial showing of the denial of a constitutional right, as is required to support
15 the issuance of a certificate of appealability. See 28 U.S.C. § 2253(c)(2). Accordingly, a
16 certificate of appealability is denied.

17 **ORDER**

18 Based on the foregoing, IT IS ORDERED THAT: (1) the Petition is dismissed without
19 prejudice; and (2) a certificate of appealability is denied.

20 IT IS SO ORDERED.

21
22 DATED: March 22, 2018

23 /s/
24 FERNANDO M. OLGUIN
25 UNITED STATES DISTRICT JUDGE
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