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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSE ALFREDO VENTURA,) Case No. SACV 12-1046-AG (JPR)
)
Petitioner,)
) ORDER TO SHOW CAUSE
vs.)
)
PEOPLE OF THE STATE OF)
CALIFORNIA et al.)
)
Respondents.)

On June 4, 2012, Petitioner filed a Petition for Writ of Habeas Corpus by a Person in State Custody in the Northern District of California; it was transferred to and filed in this Court on June 26, 2012. Because the Petition is incomplete and has omitted certain necessary information, the Court takes judicial notice under Federal Rule of Evidence 201(b) of Petitioner's docket information on the California Appellate Courts' Case Information website.¹ Petitioner indicates that he

¹ Should Petitioner's Petition survive this Order to Show Cause concerning its timeliness, the Court intends to dismiss it with leave to amend because it is so devoid of factual information as to provide no plausible claim for relief.

1 was convicted and sentenced sometime in February 1983 and has not
2 been released from custody. (Pet. at 2.) An independent search
3 using the State of California Inmate Locator on the Internet
4 confirms that Petitioner has been incarcerated since February 15,
5 1983.² Petitioner apparently did not challenge his conviction or
6 sentence on direct appeal.³ On October 24, 2011, Petitioner
7 filed a habeas petition in the California Supreme Court, which
8 was summarily denied on February 29, 2012, with citation to In re
9 Robbins, 18 Cal. 4th 770, 780, 77 Cal. Rptr. 2d 153, 159-60
10 (1998). Petitioner indicates that in that petition he challenged
11 the trial court's allegedly improper "exercise of d[i]scretion"
12 in denying his motion to withdraw his guilty plea (Pet. at 4),
13 which is similar to the claims he raises in the Petition (id. at
14 6). Petitioner states that he attempted to withdraw his guilty
15 plea in February 1993, although this might be a typographical
16 error for 1983. (Id. at 4.)

17 Under the Antiterrorism and Effective Death Penalty Act of
18 1996 ("AEDPA"), Petitioner had one year from the date his
19 conviction became final in which to file a federal habeas
20 petition. See 28 U.S.C. § 2244(d). That statute provides:

21
22 ² The Inmate Locator is available at
23 <http://inmatelocator.cdcr.ca.gov/search.aspx>.

24 ³ This Court's review of the California Appellate Courts'
25 Case Information website reveals a 2005 decision by the court of
26 appeal denying a direct appeal filed by an individual with the same
27 name as Petitioner. See People v. Ventura, No. C045314, 2005 WL
28 752393, at *1-2 (Cal. Ct. App. Apr. 4, 2005). That individual
sought to challenge his convictions and five-year sentence based on
conduct in 2002 that took place at a private home in Diamond
Springs, California. Id. Petitioner clearly is not the same
person as in that case because he has been in custody since 1983.

1 (1) A 1-year period of limitation shall apply to an
2 application for a writ of habeas corpus by a person in
3 custody pursuant to the judgment of a State court. The
4 limitation period shall run from the latest of--

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

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

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

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

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

27 Although Petitioner's one-year limitation period would
28 normally have begun to run after his conviction became final and

1 would have presumably expired sometime in 1984, AEDPA extended
2 the limitation period for those whose convictions became final
3 before its enactment on April 24, 1996, to one year after that
4 date, April 24, 1997. United States v. Gamboa, 608 F.3d 492, 493
5 n.1 (9th Cir.), cert. denied, 131 S. Ct. 809 (2010). Petitioner
6 did not file his federal Petition until June 4, 2012, 15 years
7 after his conviction became final.

8 From the face of the Petition, it does not appear that
9 Petitioner has any basis for contending that he is entitled to a
10 later trigger date under § 2244(d)(1)(B). Petitioner is not
11 contending that he was impeded from filing his federal Petition
12 by unconstitutional state action. Nor does it appear that
13 Petitioner has any basis for contending that he is entitled to a
14 later trigger date under § 2244(d)(1)(C). Petitioner is not
15 contending that any of his claims are based on a federal
16 constitutional right that was initially recognized by the U.S.
17 Supreme Court subsequent to the date his conviction became final
18 and that has been made retroactively applicable to cases on
19 collateral review. Finally, it appears to the Court that
20 Petitioner has no basis for contending that he is entitled to a
21 later trigger date under § 2244(d)(1)(D). Petitioner has failed
22 to show that in spite of due diligence he was unaware of the
23 factual bases of his claims. Indeed, because his claim is that
24 the trial court abused its discretion in refusing to allow him to
25 withdraw his guilty plea in 1993 (or 1983), he presumably has
26 known the factual bases of his claim for two decades or more.

27 Thus, the Petition is time barred unless Petitioner can show
28 entitlement to statutory or equitable tolling. See Patterson v.

1 Stewart, 251 F.3d 1243, 1246 (9th Cir. 2001). He has failed to
2 do so. No basis for statutory tolling under § 2244(d)(2) appears
3 to exist here, as Petitioner apparently did not file a state
4 habeas petition until October 24, 2011, 14 years after the AEDPA
5 deadline had expired. See Ferguson v. Palmateer, 321 F.3d 820,
6 823 (9th Cir. 2003) (holding that § 2244(d) "does not permit the
7 reinitiation of the limitations period that has ended before the
8 state petition was filed," even if state petition was timely
9 under state law). In any event, the California Supreme Court
10 dismissed Petitioner's habeas petition as untimely by citing
11 Robbins, 18 Cal. 4th at 780, and therefore he is not entitled to
12 statutory tolling for that reason as well. See Thorson v.
13 Palmer, 479 F.3d 643, 644-45 (9th Cir. 2007) (holding that
14 citation to Robbins indicates untimeliness and noting that
15 statutory tolling not available for petitions rejected by state
16 court as untimely).

17 Under certain circumstances, a habeas petitioner may be
18 entitled to equitable tolling. See Holland v. Florida, 560 U.S.
19 ___, 130 S. Ct. 2549, 2560, 177 L. Ed. 2d 130 (2010). A habeas
20 petitioner is entitled to equitable tolling only if he shows that
21 (1) he has been pursuing his rights diligently and (2) "some
22 extraordinary circumstance stood in his way." See Pace v.
23 DiGuglielmo, 544 U.S. 408, 418, 125 S. Ct. 1807, 1814, 161 L. Ed.
24 2d 669 (2005). Petitioner has not even attempted to provide any
25 basis for equitable tolling, and it is hard to imagine a
26 circumstance that could entitle him to such tolling for 15 years.
27 See Doe v. Busby, 661 F.3d 1001, 1015 (9th Cir. 2011) (noting
28 that equitable tolling of 20 years "would be difficult to

1 justify").

2 A district court has the authority to raise the statute-of-
3 limitations issue sua sponte when untimeliness is obvious on the
4 face of a petition; it may summarily dismiss the petition on that
5 ground pursuant to Rule 4 of the Rules Governing § 2254 Cases in
6 the U.S. District Courts, as long as the court gives the
7 petitioner adequate notice and an opportunity to respond. Herbst
8 v. Cook, 260 F.3d 1039, 1042-43 (9th Cir. 2001).

9 IT THEREFORE IS ORDERED that within 30 days of this Order,
10 Petitioner show cause in writing, if he has any, why the Court
11 should not dismiss this action with prejudice because it is
12 untimely. If Petitioner intends to rely on the equitable tolling
13 doctrine, he will need to include with his response to the Order
14 to Show Cause a declaration under penalty of perjury stating
15 facts showing that he has been pursuing his rights diligently and
16 "some extraordinary circumstance stood in his way."

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19 DATED: July 12, 2012



JEAN ROSENBLUTH
U.S. MAGISTRATE JUDGE

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