UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

OSHAY L. JOHNSON,	1:09-cv-01355-OWW-SMS (HC)
Petitioner,	ORDER DIRECTING RESPONDENT TO FILE RESPONSE TO PETITIONER'S OPPOSITION TO THE MOTION TO DISMISS
v.	
JAMES YATES, Warden	[Doc. 18]
Respondent. /	

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On October 9, 2009, Respondent filed a motion to dismiss the instant petition as duplicative, untimely, and for failure to state a cognizable claim. (Court Doc. 15.) On December 17, 2009, the undersigned issued Findings and Recommendation to grant Respondent's motion to dismiss. (Court Doc. 19.) However, on the same date, Petitioner filed an opposition to Respondent's motion, with a proof of service date of December 6, 2009-which is timely under the mailbox rule.[1] (Court Doc. 18.)

The Court finds it necessary for Respondent to submit a response to Petitioner's claim that his sentence was modified by way of an amended abstract of judgment on August 16, 2007.

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[1] See Rule 3(d) of the Federal Rules Governing Section 2254 Cases; See Houston v. Lack, 487 U.S. 266 (1988) (deeming a prose prisoner's notice of appeal filed at the moment it was delivered to prison authorities for forwarding to the clerk of court). The Ninth Circuit Court of Appeals held in Saffold v. Newland, 250 F.3d 1282, 1288-89 (9th Cir. 2000 amended May 23, 2001) that the "mailbox" rule as provided for in Houston also applies to state and federal petitions with respect to calculating the statute of limitations under the AEDPA.

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1   (Exhibit A, to Opposition.) Accordingly, it is HEREBY ORDERED that within twenty (20) days

2   from the date of service of this order, Respondent shall file a response to Petitioner's opposition

3   to the motion to dismiss.

9   IT IS SO ORDERED.

10   **Dated:**   **March 3, 2010**   **/s/ Sandra M. Snyder**
                                                  UNITED STATES MAGISTRATE JUDGE