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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ARTHUR OCHOA,

 Petitioner,

 v.

FEDERAL DISTRICT COURTS,

 Respondent.

Case No. 1:16-cv-00575-DAD-SAB-HC

ORDER GRANTING PETITIONER LEAVE
TO FILE A MOTION TO AMEND THE
PETITION AND NAME A PROPER
RESPONDENT

ORDER TO SHOW CAUSE

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

I.
DISCUSSION

Rule 4 of the Rules Governing Section 2254 Cases requires preliminary review of a habeas petition and allows a district court to dismiss a petition before the respondent is ordered to file a response, if it “plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court.”

A. Leave to Amend Petition to Name a Proper Respondent

In this case, Petitioner names “Federal District Courts” as the Respondent. It is insufficient to name “Federal District Courts” as the Respondent. A petitioner seeking habeas corpus relief under 28 U.S.C. § 2254 must name the state officer having custody of him as the

1 respondent to the petition. Rule 2(a), Rules Governing Section 2254 Cases; Ortiz-Sandoval v.
2 Gomez, 81 F.3d 891, 894 (9th Cir. 1996); Stanley v. California Supreme Court, 21 F.3d 359, 360
3 (9th Cir. 1994). Normally, the person having custody of an incarcerated petitioner is the warden
4 of the prison in which the petitioner is incarcerated. Smith v. Idaho, 392 F.3d 350, 355 (9th Cir.
5 2004); Stanley, 21 F.3d at 360. However, the chief officer in charge of state penal institutions is
6 also appropriate. Ortiz-Sandoval, 81 F.3d at 894; Stanley, 21 F.3d at 360.

7 Petitioner’s failure to name a proper respondent requires dismissal of his habeas petition
8 for lack of personal jurisdiction. Stanley, 21 F.3d at 360. However, the Court will give Petitioner
9 the opportunity to cure this defect by amending the petition to name a proper respondent, such as
10 the warden of his facility or the chief officer in charge of state penal institutions. See Dubrin v.
11 California, 720 F.3d 1095, 1100 (9th Cir. 2013) (petitioner should be granted leave to amend
12 petition to name proper respondent). In the interests of judicial economy, Petitioner need not file
13 an amended petition. Instead, Petitioner may file a motion entitled “Motion to Amend the
14 Petition to Name a Proper Respondent” wherein Petitioner may name the proper respondent in
15 this action.

16 **B. Exhaustion**

17 Also, it appears that Petitioner may have failed to exhaust his claims in the instant
18 petition. A petitioner in state custody who is proceeding with a petition for writ of habeas corpus
19 must exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1). The exhaustion doctrine is based
20 on comity to the state court and gives the state court the initial opportunity to correct the state’s
21 alleged constitutional deprivations. Coleman v. Thompson, 501 U.S. 722, 731 (1991); Rose v.
22 Lundy, 455 U.S. 509, 518 (1982). A petitioner can satisfy the exhaustion requirement by
23 providing the highest state court with a full and fair opportunity to consider each claim before
24 presenting it to the federal court. O’Sullivan v. Boerckel, 526 U.S. 838, 845 (1999); Duncan v.
25 Henry, 513 U.S. 364, 365 (1995); Picard v. Connor, 404 U.S. 270, 276 (1971).

26 Here, it is unclear whether Petitioner raised his claims before the California Supreme
27 Court. If Petitioner has not sought relief in the California Supreme Court, the Court cannot
28 proceed to the merits of those claims. 28 U.S.C. § 2254(b)(1). It is possible, however, that

1 Petitioner has presented all of his claims to the California Supreme Court and failed to indicate
2 this to the Court. Thus, Petitioner must inform the Court whether each of his claims has been
3 presented to the California Supreme Court, and if possible, provide the Court with a copy of the
4 petition filed in the California Supreme Court that includes the claims now presented and a file
5 stamp showing that the petition was indeed filed in the California Supreme Court.

6 **C. Statute of Limitations**

7 On April 24, 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act
8 of 1996 (“AEDPA”). The AEDPA imposes various requirements on all petitions for writ of
9 habeas corpus filed after the date of its enactment. Lindh v. Murphy, 521 U.S. 320 (1997);
10 Jeffries v. Wood, 114 F.3d 1484, 1499 (9th Cir. 1997) (en banc). As the instant petition was filed
11 on April 25, 2016, it is subject to the provisions of the AEDPA.

12 The AEDPA imposes a one year period of limitation on petitioners seeking to file a
13 federal petition for writ of habeas corpus. 28 U.S.C. § 2244(d)(1). Section 2244(d) provides:

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

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

19 (B) the date on which the impediment to filing an application
20 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;

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

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

26 (2) The time during which a properly filed application for State
27 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.

28 28 U.S.C. § 2244(d).

1 In most cases, the limitation period begins running on the date that the petitioner’s direct
2 review became final. In this case, it is unclear when direct review became final. The petition only
3 states that Petitioner was convicted on January 29, 2009, and appealed to the California Court of
4 Appeals, Fifth Appellate District. (ECF No. 1 at 1, 3).¹ Petitioner had one year from the
5 conclusion of direct review, absent applicable tolling, in which to file his federal petition for writ
6 of habeas corpus. Despite the lack of pertinent information, it appears that Petitioner may have
7 filed the instant petition beyond the expiration of the statute of limitations since Petitioner
8 explains that his “delay in claimed grounds for relief” was due to not having “new evidence.”
9 (ECF No. 1 at 3). Thus, Petitioner must inform the Court of the following: (1) when the
10 California Court of Appeals issued its decision on his direct appeal; (2) whether Petitioner sought
11 relief in the California Supreme Court; and (3) if so, when the California Supreme Court issued
12 its decision.

13 1. Statutory Tolling Pursuant to 28 U.S.C. § 2244(d)(2)

14 Section 2244(d)(2) states that the “time during which a properly filed application for
15 State post-conviction or other collateral review with respect to the pertinent judgment or claim is
16 pending shall not be counted toward” the one-year limitation period. Petitioner states that he
17 currently has a state habeas corpus petition “in process seeking relief through SB 261 bill.” (ECF
18 No. 1 at 4). If the limitations period had already expired at the time the state collateral challenge
19 was filed, the collateral challenge has no tolling consequences. See Green v. White, 223 F.3d
20 1001, 1003 (9th Cir.2000). Thus, Petitioner must inform the Court of when he filed this state
21 habeas corpus petition. Petitioner also must inform the Court if he filed any other state habeas
22 corpus petitions, when they were filed, and the date of the state court’s decisions on those
23 petitions.

24 2. Equitable Tolling

25 The limitations period also is subject to equitable tolling if the petitioner demonstrates
26 ““(1) that he has been pursuing his rights diligently, and (2) that some extraordinary
27 circumstance stood in his way’ and prevented timely filing.” Holland v. Florida, 560 U.S. 631,

28 ¹ Page numbers refer to the ECF page numbers stamped at the top of the page.

1 649 (2010) (quoting Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005)). Petitioner bears the burden
2 of alleging facts that would give rise to tolling. Id.; Pace, 544 U.S. at 418. Petitioner argues that
3 his delay in filing the instant federal petition was due to not having new evidence. However,
4 Petitioner does not explain how not having new evidence prevented him from timely filing.
5 Petitioner also does not demonstrate that he has been pursuing his rights diligently.

6 **II.**

7 **ORDER**

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. Petitioner is GRANTED **THIRTY (30) days** from the date of service of this order in
10 which to file a motion to amend the petition to name a proper respondent;
- 11 2. Petitioner is ORDERED to SHOW CAUSE within **THIRTY (30) days** from the date
12 of service of this order why the petition should not be dismissed for failure to exhaust
13 state remedies; and
- 14 3. Petitioner is ORDERED to SHOW CAUSE within **THIRTY (30) days** from the date
15 of service of this order why the petition should not be dismissed for violating the
16 limitations period of 28 U.S.C. § 2244(d).

17 Petitioner is forewarned that failure to follow this order will result in dismissal of the
18 petition pursuant to Federal Rule of Civil Procedure 41(b) (a petitioner's failure to prosecute or
19 to comply with a court order may result in a dismissal of the action). Failure to amend the
20 petition and state a proper respondent will result in the petition being dismissed for lack of
21 jurisdiction.

22 IT IS SO ORDERED.

23 Dated: May 25, 2016

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25 _____
26 UNITED STATES MAGISTRATE JUDGE
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