



1 enhancement allegations were also found to be true. On July 12, 2012, Petitioner was sentenced  
2 to a determinate prison term of eighteen years.

3 On July 9, 2014, the California Court of Appeal, Fifth Appellate District reversed  
4 Petitioner's conviction for participating in a street gang and remanded the matter to the trial court  
5 for the prosecution to determine whether it would retry the case. The Court of Appeal also  
6 vacated a one year enhancement to Petitioner's sentence, but affirmed the conviction in all other  
7 respects. The prosecution chose not to retry Petitioner for participating in a criminal street gang.  
8 Petitioner did not seek review in the California Supreme Court.

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10 Thereafter, Petitioner filed several petitions for writs of habeas corpus with the state court.  
11 On November 5, 2015, Petitioner filed a petition with the Kern County Superior Court ("Superior  
12 Court"), which was denied on February 23, 2016. On April 23, 2016, Petitioner filed a petition  
13 with the Court of Appeal, which was summarily denied on June 21, 2016. On July 12, 2016,  
14 Petitioner filed a petition with the California Supreme Court, which was summarily denied on  
15 September 21, 2016.

16  
17 On July 18, 2016, Petitioner filed a second petition for writ of habeas corpus with the  
18 Superior Court, which was denied on October 21, 2016. On August 17, 2016, Petitioner filed a  
19 third petition before the Superior Court, which was denied on October 28, 2016.

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21 On February 12, 2017, Petitioner filed his fourth petition for writ of habeas corpus before  
22 the Superior Court, which was denied on April 10, 2017. On May 6, 2017, Petitioner filed a  
23 petition with the Court of Appeal, which was denied on June 22, 2017.

24 On February 13, 2017, Petitioner filed his petition before this Court, and on July 27, 2017,  
25 Petitioner filed his second amended petition. Respondent moved to dismiss the petition as  
26 untimely on October 2, 2017. Petitioner filed an "Objection" to the motion to dismiss on October  
27 19, 2017, which the Court construes as an opposition to the motion to dismiss.  
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2 **II. The Petition is Untimely**

3 On April 24, 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act of  
4 1996 (“AEDPA”), which applies to all petitions for writ of habeas corpus filed after its  
5 enactment. *Lindh v. Murphy*, 521 U.S. 320, 327 (1997). AEDPA provides a one-year period of  
6 limitation in which a petitioner may file a petition for writ of habeas corpus. 28 U.S.C. §  
7 2244(d)(1). The limitations period is measured from the latest of:  
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9 (A) the date on which the judgment became final by conclusion  
10 of direct review or the expiration of the time for seeking such  
11 review;

12 (B) the date on which the impediment to filing a State action in  
13 violation of the Constitution or laws of the United States is  
14 removed, if the applicant was prevented from filing by such state  
15 action;

16 (C) the date on which the constitutional right asserted was  
17 initially recognized by the Supreme Court and made retroactively  
18 applicable to cases on collateral review; or

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

22 28 U.S.C. § 2244(d)(1).

23 Here, direct review in the State of California ended July 9, 2014, when the California  
24 Court of Appeal affirmed the judgment in part.<sup>2</sup> Petitioner did not seek review in the California  
25 Supreme Court. The federal statutory limitation period began on August 18, 2014, following the  
26 expiration of the 40-day period in which to seek review in the California Supreme Court.  
27 Accordingly, the one-year statutory limitation period expired on August 18, 2015. Petitioner filed  
28 his petition for writ of habeas corpus with this Court on February 13, 2017; consequently the  
above-captioned petition is untimely.

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<sup>2</sup> The Court of Appeal affirmed Petitioner’s convictions for second degree robbery and assault with a firearm, but reversed on Petitioner’s conviction for participating in a street gang. In the petition before this Court, Petitioner is challenging the portion of the conviction the Court of Appeal affirmed: second degree robbery and assault with a firearm.

1           **III.    Petitioner is Not Entitled to Equitable Tolling**

2           In his reply to the motion to dismiss, Petitioner contends that he is entitled to equitable  
3 tolling due to “mental distress” from the loss of several family members; a hand disability, which  
4 makes it difficult for Petitioner to write; and lack of legal knowledge.

5           The one-year statutory period is intended to protect the federal judicial system from  
6 having to address stale claims. *Guillory v. Roe*, 329 F.3d 1015, 1018 (9th Cir. 2003). To  
7 effectuate that objective, the bar to achieve equitable tolling is set very high. *Id.* A habeas  
8 petitioner is entitled to equitable tolling of the one-year statute of limitations only if the petitioner  
9 shows that (1) he has been pursuing his rights diligently and (2) some extraordinary circumstance  
10 prevented timely filing. *See Holland v. Florida*, 560 U.S. 631, 634, 648 (2010); *Ramirez v. Yates*,  
11 571 F.3d 993, 997 (9th Cir. 2009). The petitioner bears the burden of alleging facts sufficient to  
12 support equitable tolling. *Pace v. Di Guglielmo*, 544 U.S. 408, 418 (2005).

13           To satisfy the first prong, the petitioner must demonstrate reasonable diligence. *Bills v.*  
14 *Clark*, 628 F.3d 1092, 1096 (9<sup>th</sup> Cir. 2010). Failure to act diligently throughout the time at issue  
15 will break the link of causation between the extraordinary circumstance and the failure to timely  
16 pursue relief. *See Spitsyn v. Moore*, 345 F.3d 796, 802 (9th Cir. 2003) (finding equitable tolling  
17 unavailable when the petitioner failed to exercise reasonable diligence under the circumstances  
18 that he faced); *Guillory*, 329 F.3d at 1016 (in the absence of diligent effort, extraordinary  
19 circumstance did not mandate equitable tolling); *Miles v. Prunty*, 187 F.3d 1104, 1107 (9th Cir.  
20 1999) (denying equitable tolling when the petitioner's own conduct rather than external forces  
21 accounted for the untimely filing).

22           "[T]he threshold necessary to trigger equitable tolling under [the] AEDPA is very high,  
23 lest the exceptions swallow the rule." *Mendoza v. Carey*, 449 F.3d 1065, 1068 (9th Cir. 2006). A  
24 court should "permit equitable tolling of AEDPA's limitations period 'only if extraordinary  
25 circumstances beyond a prisoner's control make it impossible to file a claim on time.'" *Miles*, 187  
26 F.3d at 1107 (quoting *Calderon v. United States District Court*, 163 F.3d 530, 541 (9th Cir.  
27 1998), *abrogated on other grounds*, *Woodford v. Garceau*, 538 U.S. 202 (2003)). The petitioner  
28 must show that an external force caused the petition's untimeliness, not "oversight,

1 miscalculation, or negligence." *Waldon-Ramsey v. Pacholke*, 556 F.3d 1008, 1011 (9th Cir.  
2 2009). A court should determine whether the circumstances are extraordinary using a flexible  
3 case-by-case approach, looking for special circumstances that warrant special treatment in an  
4 appropriate case. *Holland*, 130 S.Ct. at 2563.

5 Petitioner contends that he is entitled to equitable tolling due to mental distress. (Doc. 27  
6 at 1.) He states that his aunt passed away, but does not list the date of her passing, and his father  
7 passed away on December 31, 2015. *Id.* at 1-2. Petitioner did not provide the Court any medical  
8 records to indicate that he was incapable of timely filing his petition for habeas corpus with this  
9 Court due to mental distress. Further, Petitioner's father passed away four months *after* the  
10 statute of limitations expired on August 18, 2015. Therefore, Petitioner has not met his burden of  
11 alleging facts sufficient to support equitable tolling. *Pace*, 544 U.S. at 418.

12 Petitioner states that he suffers from a "hand disability" that causes a loss of flexibility in  
13 his right hand, numbness, and throbbing. (Doc. 27 at 3.) Petitioner has not provided any medical  
14 records that document his alleged physical disability. All of Petitioner's filings in this Court and  
15 in the California courts have also been hand written. Where a petitioner fails to show "any causal  
16 connection" between the grounds for which he alleges the right to equitable tolling and his  
17 inability to timely file a federal habeas petition, the equitable tolling claim may be denied.  
18 *Gaston v. Palmer*, 417 F.3d 1030, 1034 (9th Cir. 2005) (Not clear error to find equitable tolling  
19 inapplicable where prisoner fails to show causal connection between physical disability and  
20 inability to timely file petition.). Here, Petitioner has failed to show a causal connection between  
21 his physical disability and his inability to timely file his federal petition. Consequently, Petitioner  
22 has not met his burden of alleging facts sufficient to support equitable tolling. *Pace*, 544 U.S. at  
23 418.

24 Finally, Petitioner alleges that he lacks legal knowledge and was restricted from  
25 performing legal research. (Doc. 27 at 3-4.) Allegations that a petitioner lacked legal knowledge  
26 do not constitute extraordinary circumstances since nearly all inmates lack legal knowledge and  
27 rely on the legal assistance of untrained jailhouse lawyers. *See, e.g., Fisher v. Ramirez-Palmer*,  
28 219 F. Supp. 2d 1076, 1080-81 (E.D. Cal. 2002); *Wilson v. Bennett*, 188 F. Supp. 2d 347, 353-54

1 (S.D.N.Y. 2002); *Henderson v. Johnson*, 1 F. Supp. 2d 650, 655 (N.D. Tex. 1998). Equitable  
2 tolling is not warranted based on a petitioner's lack of understanding of the law. *Chaffer v.*  
3 *Prosper*, 592 F.3d 1046, 1049 (9th Cir. 2010) (finding that the petitioner's *pro se* status, the law  
4 library's missing some reporter volumes, and the petitioner's reliance on busy inmate helpers were  
5 not extraordinary circumstances "given the vicissitudes of prison life"); *Raspberry v. Garcia*, 448  
6 F.3d 1150, 1154 (9th Cir. 2006) ("[A] *pro se* petitioner's lack of legal sophistication is not, by  
7 itself, an extraordinary circumstance warranting equitable tolling"); *Hughes v. Idaho State Bd. of*  
8 *Corrections*, 800 F.2d 905, 909 (9th Cir. 1986) (finding *pro se* petitioner's illiteracy and lack of  
9 legal knowledge insufficient to justify equitable tolling).

10 In his opposition to the motion to dismiss, Petitioner notes that he was placed in restrictive  
11 housing at one point. (Doc. 27 at 4.) However, equitable tolling is not warranted due to the  
12 delays inherent in prison life, such as lockdowns, inability to obtain relevant legal documents, or  
13 physical inability to access the law library, as the law requires petitioners to take the restrictions  
14 of prison life into account when calculating the time needed to complete and file a federal  
15 petition. *Ramirez*, 571 F.3d at 998 (finding ordinary limitations on access to law library  
16 insufficient to warrant equitable tolling); *United States v. Van Poyck*, 980 F.Supp. 1108, 1111  
17 (C.D. Cal. 1997) (finding limitations on law library access due to lockdowns insufficient to merit  
18 equitable tolling).

19 Because the circumstances leading to Petitioner's untimely submission of his habeas  
20 petition were not extraordinary, the undersigned recommends that the Court find that Petitioner is  
21 not entitled to equitable tolling of the statute of limitations.

#### 22 **IV. Certificate of Appealability**

23 A petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a  
24 district court's denial of his petition, but may only appeal in certain circumstances. *Miller-El v.*  
25 *Cockrell*, 537 U.S. 322, 335-36 (2003). The controlling statute in determining whether to issue a  
26 certificate of appealability is 28 U.S.C. § 2253, which provides:  
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1 (a) In a habeas corpus proceeding or a proceeding under section 2255  
2 before a district judge, the final order shall be subject to review, on appeal, by  
3 the court of appeals for the circuit in which the proceeding is held.

4 (b) There shall be no right of appeal from a final order in a proceeding  
5 to test the validity of a warrant to remove to another district or place for  
6 commitment or trial a person charged with a criminal offense against the  
7 United States, or to test the validity of such person's detention pending  
8 removal proceedings.

9 (c) (1) Unless a circuit justice or judge issues a certificate of  
10 appealability, an appeal may not be taken to the court of appeals from—

11 (A) the final order in a habeas corpus proceeding in which the  
12 detention complained of arises out of process issued by a State court; or

13 (B) the final order in a proceeding under section 2255.

14 (2) A certificate of appealability may issue under paragraph (1)  
15 only if the applicant has made a substantial showing of the denial of a  
16 constitutional right.

17 (3) The certificate of appealability under paragraph (1) shall  
18 indicate which specific issues or issues satisfy the showing required by  
19 paragraph (2).

20 If a court denies a habeas petition, the court may only issue a certificate of appealability  
21 "if jurists of reason could disagree with the district court's resolution of his constitutional claims  
22 or that jurists could conclude the issues presented are adequate to deserve encouragement to  
23 proceed further." *Miller-El*, 537 U.S. at 327; *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).  
24 Although the petitioner is not required to prove the merits of his case, he must demonstrate  
25 "something more than the absence of frivolity or the existence of mere good faith on his . . .  
26 part." *Miller-El*, 537 U.S. at 338.

27 Reasonable jurists would not find the Court's determination that the petition is barred by  
28 the statute of limitations to be debatable, wrong, or deserving of encouragement to proceed  
further. Accordingly, the undersigned recommends that the Court decline to issue a certificate of  
appealability.

