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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLES GLENN NORMAN JR.,

Petitioner,

No. CIV S-06-2235 MCE DAD P

vs.

JOHN DOVEY, et al.,

Respondents.

FINDINGS AND RECOMMENDATIONS

_____/

Petitioner, a state prisoner proceeding pro se, has filed a third amended petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On August 20, 2009, the undersigned ordered respondent to file and serve a response to the petition. On October 6, 2009, respondent filed the pending motion to dismiss, arguing that petitioner’s habeas petition is time-barred under the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) and that petitioner failed to properly exhaust his federal habeas claims by first fairly presenting them to the highest state court. Petitioner has filed an opposition to the motion.

BACKGROUND

On July 26, 2001, a Sacramento County Superior Court jury found petitioner guilty of second-degree murder and assault on a child likely to produce bodily injury resulting in death. A number of sentencing enhancement allegations were also found by the jury to be true.

1 On August 23, 2001, the Sacramento County Superior Court sentenced petitioner to an
2 indeterminate term of fifty-eight years to life in state prison. On May 28, 2003, the California
3 Court of Appeal for the Third Appellate District affirmed petitioner's judgment of conviction.
4 On August 27, 2003, the California Supreme Court denied review. (Pet. at 2; Resp't's Lodged
5 Docs. 1-4.)

6 Petitioner subsequently filed four petitions seeking habeas corpus relief in state
7 court. Under the mailbox rule, on September 7, 2005, petitioner filed a petition for writ of
8 habeas corpus in the Sacramento County Superior Court which was denied on October 17, 2005.
9 On or about December 27, 2005, petitioner filed a petition for writ of habeas corpus in the
10 California Court of Appeal for the Third Appellate District which was denied on January 5, 2006.
11 On February 27, 2006, petitioner filed a petition for writ of habeas corpus in the California
12 Supreme Court which was denied on October 25, 2006. Finally, on March 2, 2006, petitioner
13 filed a second petition for writ of habeas corpus in the Sacramento County Superior Court which
14 was denied on April 25, 2006. (Resp't's Lodged Docs. 5-12.)

15 On October 3, 2006, petitioner commenced this action by filing a federal petition
16 for writ of habeas corpus with this court. The court dismissed the petition with leave to amend.
17 Although petitioner filed an amended petition, the court subsequently dismissed it and also
18 dismissed petitioner's second amended petition with leave to file a third amended petition. On
19 August 17, 2009, petitioner filed his third amended petition.

20 **RESPONDENT'S MOTION TO DISMISS**

21 I. Respondent's Motion

22 Respondent moves to dismiss the pending petition, arguing that it is time-barred.
23 Specifically, respondent argues that on August 27, 2003, the California Court Supreme Court
24 denied petitioner's petition for review, causing his judgment of conviction to become "final" on
25 November 25, 2003, after the time for filing a petition for writ of certiorari expired. Respondent
26 argues that the one-year statute of limitations for the filing a federal habeas petition began to run

1 the following day, on November 26, 2003, and expired one year later on November 25, 2004.

2 (Resp't's Mot. to Dismiss at 3.)

3 Respondent acknowledges that the proper filing of a state post-conviction
4 application challenging a judgment of conviction tolls the one-year statute of limitations period.
5 Respondent argues, however, that petitioner did not file his first state habeas petition until after
6 the statute of limitations for the filing of a federal petition had expired. Respondent argues that
7 petitioner's filings in state court after the AEDPA statute of limitations expired cannot serve to
8 restart the clock at zero or otherwise save a claim for federal habeas relief from being time
9 barred. In addition, respondent argues that the Sacramento County Superior Court denied
10 petitioner's first and fourth petitions for writ of habeas corpus as untimely. Respondent contends
11 that untimely petitions are not "properly filed," and therefore cannot serve to toll the AEDPA
12 statute of limitations period. (Resp't's Mot. to Dismiss at 3-4.)

13 Respondent also argues that petitioner failed to properly exhaust his federal
14 habeas claims by first fairly presenting them to the highest state court. Specifically, respondent
15 argues that petitioner first filed a petition for review that raised only two issues, neither of which
16 mirror the claims petitioner raises in his pending federal habeas petition. Petitioner next filed a
17 petition for writ of habeas corpus with the California Supreme Court. Although that petition
18 contained the same seven claims that petitioner raises in his pending federal petition, respondent
19 contends that it did not serve to satisfy the exhaustion requirement because the California
20 Supreme Court denied that habeas petition with citations to the decisions in People v. Duvall, 9
21 Cal. 4th 464, 474 (1995) and In re Swain, 34 Cal. 2d 300 (1949). According to respondent, the
22 California Supreme Court's citation to these cases means that petitioner failed to present the
23 claims in his petition with sufficient particularity. (Resp't's Mot. to Dismiss at 4-6.)

24 II. Petitioner's Opposition

25 In a brief opposition to respondent's motion to dismiss, petitioner summarily
26 argues that he could not file a timely federal petition from October 2003 through March 2004 or

1 from June 11, 2004, through April 2005 because he was being involuntarily medicated with
2 antipsychotic drugs and housed in administrative segregation units pursuant to California
3 Administrative Code Title 15, § 3364(b). Petitioner also argues that he could not file a timely
4 federal habeas petition from 2003 through April 2005 because he did not have adequate
5 experience with the law and only had a 4.0 grade level. (Pet'r's Opp'n to Resp't's Mot. to
6 Dismiss at 1-2.)

7 ANALYSIS

8 I. The AEDPA Statute of Limitations

9 On April 24, 1996, Congress enacted AEDPA which amended 28 U.S.C. § 2244
10 by adding the following provision:

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

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

18 (B) the date on which the impediment to filing an
19 application created by State action in violation of the Constitution
20 or laws of the United States is removed, if the applicant was
21 prevented from filing by such State action;

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

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

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

25 The one-year AEDPA statute of limitations applies to all federal habeas corpus petitions filed
26 after the statute was enacted and therefore applies to the pending petition. See Lindh v. Murphy,

1 521 U.S. 320, 322-23 (1997).

2 II. Application of § 2244(d)(1)(A)

3 As noted above, on July 26, 2001, a Sacramento County Superior Court jury
4 found petitioner guilty of second-degree murder and assault on a child likely to produce bodily
5 injury resulting in death. A number of sentencing enhancement allegations were also found to be
6 true. On August 23, 2001, the Superior Court sentenced petitioner to an indeterminate term of
7 fifty-eight years to life in state prison. On May 28, 2003, the California Court of Appeal for the
8 Third Appellate District affirmed petitioner's judgment of conviction. On August 27, 2003, the
9 California Supreme Court denied review. (Pet. at 2; Resp't's Lodged Docs. 1-4.)

10 For purposes of federal habeas review, petitioner's conviction became final on
11 November 25, 2003, ninety days after the California Supreme Court denied his petition for
12 review. See Summers v. Schriro, 481 F.3d 710, 717 (9th Cir. 2007); Bowen v. Roe, 188 F.3d
13 1157, 1158-59 (9th Cir. 1999). The AEDPA statute of limitations period began to run the
14 following day, on November 26, 2003, and expired one year later on November 25, 2004. Even
15 with application of the mailbox rule, petitioner did not file his original federal habeas petition
16 with this court until October 3, 2006. Accordingly, petitioner's federal petition for writ of habeas
17 corpus is untimely unless he is entitled to the benefit of tolling.

18 III. Application of § 2244(d)(2)

19 "The time during which a properly filed application for State post-conviction or
20 other collateral review with respect to the pertinent judgment or claim is pending shall not be
21 counted" toward the AEDPA statute of limitations. 28 U.S.C. § 2244(d)(2). The statute of
22 limitations is not tolled during the interval between the date on which a judgment becomes final
23 and the date on which the petitioner files his first state collateral challenge because there is no
24 case "pending." Nino v. Galaza, 183 F.3d 1003, 1006 (9th Cir. 1999). Once a petitioner
25 commences state collateral proceedings, a state habeas petition is "pending" during a full round
26 of review in the state courts, including the time between a lower court decision and the filing of a

1 new petition in a higher court, as long as the intervals between the filing of those petitions are
2 “reasonable.” Carey v. Saffold, 536 U.S. 214, 222-24 (2002).

3 In this case, petitioner filed four petitions seeking habeas corpus relief in state
4 court. However, petitioner did not file his first state habeas petition in the Sacramento County
5 Superior Court until September 7, 2005, long after the statute of limitations for the filing of a
6 federal habeas petition had expired. It is well established that “section 2244(d) does not permit
7 the reinitiation of the limitations period that has ended before the state petition was filed.”
8 Ferguson v. Palmateer, 321 F.3d 820, 823 (9th Cir. 2003). Accordingly, by the time petitioner
9 filed his original federal habeas petition on October 3, 2006, the AEDPA statute of limitations
10 had expired, rendering petitioner’s federal habeas petition time-barred.

11 IV. Equitable Tolling

12 The United States Supreme Court has held that, “a litigant seeking equitable
13 tolling bears the burden of establishing two elements: (1) that he has been pursuing his rights
14 diligently, and (2) that some extraordinary circumstance stood in his way.” Pace v. DiGuglielmo,
15 544 U.S. 408, 418 (2005). See also Lawrence v. Florida, 549 U.S. 327, 328 (2007) (assuming
16 without deciding that equitable tolling applies to § 2244(d)). The Ninth Circuit has stated that
17 “the purpose of equitable tolling ‘is to soften the harsh impact of technical rules which might
18 otherwise prevent a good faith litigant from having a day in court.’” Harris v. Carter, 515 F.3d
19 1051, 1055 (9th Cir. 2008). Nonetheless, equitable tolling of the AEDPA statute of limitations
20 will be unavailable in most cases. See Corjasso v. Ayers, 278 F.3d 874, 877 (9th Cir. 2002);
21 Miles v. Prunty, 187 F.3d 1104, 1107 (9th Cir. 1999). Moreover, a habeas petitioner seeking
22 equitable tolling must show that the extraordinary circumstances alleged were the “but for” and
23 proximate cause of the untimely filing of his federal petition. See Bryant v. Ariz. Atty. Gen., 499
24 F.3d 1056, 1061 (9th Cir. 2007); Allen v. Lewis, 255 F.3d 798, 800-01 (9th Cir. 2001).

25 Here, the court has construed petitioner’s arguments regarding the timeliness of
26 his federal petition as a claim of entitlement to equitable tolling. Even assuming petitioner has

1 been pursuing his rights diligently, he has not demonstrated that some extraordinary
2 circumstance stood in his way of filing a timely federal petition. Specifically, petitioner argues
3 that he could not file a timely federal petition because he was being involuntarily medicated with
4 antipsychotic drugs and housed in administrative segregation units. To be sure, a mental illness
5 can represent an extraordinary circumstance entitling a petitioner to the equitable tolling of the
6 AEDPA statute of limitations. See Laws v. Lamarque, 351 F.3d 919, 923 (9th Cir. 2003);
7 Calderon v. United States District Court (Kelly), 163 F.3d 530, 541 (9th Cir 1998) (en banc) (A
8 “putative habeas petitioner’ s mental incompetency [is] a condition that is, obviously, an
9 extraordinary circumstance beyond the prisoner’s control,” and therefore “mental incompetency
10 justifies equitable tolling.”). However, not every mental illness automatically serves to toll the
11 statute of limitations.

12 In this case, petitioner has not stated what mental illness he suffers from or what
13 medication medical personnel administered to him. In addition, petitioner has not explained how
14 his mental illness or any side effects of his medication rendered him incapable of bringing this
15 action within the statute of limitations period. Nor has petitioner indicated how being housed in
16 administrative segregation units prevented him from filing a timely federal petition. In fact,
17 petitioner has not submitted any evidence whatsoever to this court in support his bare allegations.
18 Even his opposition to the pending motion to dismiss is unverified. In this regard, petitioner has
19 not established, and the record does not reflect, any causal link between petitioner’s alleged
20 mental illness and involuntary medication on the one hand and his delay in filing this federal
21 habeas action on the other hand.¹ See Gaston v. Palmer, 417 F.3d 1030, 1034-35 (9th Cir. 2005)

22
23 ¹ Petitioner has submitted with his petition copies of some of his medical records in support
24 of his third claim for relief in which he alleges that the trial court improperly denied him a
25 competency hearing during his underlying criminal proceedings. (Pet. Ex. C.) Petitioner submitted
26 the same medical records with three of his petitions seeking habeas corpus relief in state court.
(Resp’t’s Lodged Docs. 5, 7 & 9.) However, petitioner’s medical records are dated from the late
1980s through the 1990s, well before the AEDPA statute of limitations began to run with respect to
this action. None of petitioner’s medical records are dated near the period of November 26, 2003,
to November 25, 2004, the relevant period of time during which the statute of limitations was

1 (upholding a finding that equitable tolling was inapplicable where prisoner failed to show causal
2 connection between physical and mental disabilities and inability to timely file petition),
3 modified on other grounds by, 447 F.3d 1165 (9th Cir. 2006). See also, e.g., Jones v. Marshall,
4 No. CV 09-0233 GHK (JTL), 2009 WL 2189892 at *9 n.13 (C.D. Cal. July 17, 2009) (rejecting
5 claim for equitable tolling based on alleged mental illness because petitioner failed to establish
6 that his mental condition was the “but for” cause of his failure to timely file a federal habeas
7 petition); Wright v. Felker, No. 08-cv-2255 JM (PCL), 2009 WL 1396406 at *6-9 (S.D. Cal.
8 May 18, 2009) (rejecting claim for equitable tolling based on alleged mental illness because
9 petitioner failed to present medical evidence detailing his mental condition during the statute of
10 limitations period).

11 Petitioner also argues that he could not file a timely federal petition because of his
12 inexperience with the law and his 4.0 grade level. However, it is well established that a lack of
13 understanding of the law and the legal system is not grounds for equitable tolling. See, e.g.,
14 Raspberry v. Garcia, 448 F.3d 1150, 1154 (9th Cir. 2006) (“a pro se petitioner’s lack of legal
15 sophistication is not, by itself, an extraordinary circumstance warranting equitable tolling”);
16 Hughes v. Idaho State Bd. of Corrs., 800 F.2d 905, 909 (9th Cir. 1986) (pro se prisoner’s
17 illiteracy and lack of knowledge of the law unfortunate but insufficient to establish cause).

18 Accordingly, for the reasons discussed above, respondent’s motion to dismiss
19 should be granted, and petitioner’s federal petition for writ of habeas corpus should be dismissed
20

21 running in connection with this action. The submitted records therefore have little probative value
22 as to petitioner’s alleged mental illness from 2003 to 2004. See Laws, 351 F.3d at 923 (noting that
23 the petitioner’s adjudication of competency in 1993 “has little bearing on his competence *vel non*
24 during 1996-2000, a period for which no medical records have been offered by either Laws or the
25 respondent.”). Moreover, the court notes that none of petitioner’s medical records indicate that his
26 alleged mental illness was severe enough even at the time to warrant inpatient status. Nor do those
records indicate that he needed to be involuntarily medicated. In fact, petitioner’s medical records
include two informed consent forms signed by petitioner for antidepressant medication, which he
received on an outpatient basis. In sum, petitioner’s medical records are either inconsequential or
insufficient to support his claim that his mental health condition was an “extraordinary
circumstance” for purposes of equitable tolling.

1 with prejudice.²

2 **CONCLUSION**

3 Accordingly, IT IS HEREBY RECOMMENDED that:

- 4 1. Respondent's October 6, 2009 motion to dismiss (Doc. No. 38) be granted; and
5 2. This action be closed.

6 These findings and recommendations are submitted to the United States District
7 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-
8 one days after being served with these findings and recommendations, any party may file written
9 objections with the court and serve a copy on all parties. Such a document should be captioned
10 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
11 shall be served and filed within fourteen days after service of the objections. The parties are
12 advised that failure to file objections within the specified time may waive the right to appeal the
13 District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

14 DATED: April 7, 2010.

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17 _____
18 DALE A. DROZD
19 UNITED STATES MAGISTRATE JUDGE

17 DAD:9
18 norm2235.157

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25 ² In light of these findings and recommendations concluding that petitioner's federal habeas
26 petition is untimely and should be dismissed with prejudice, the court declines to address
respondent's alternative argument that petitioner's federal habeas petition contains unexhausted
claims.