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

GARLAND PROCTOR,

Petitioner,

No. CIV S-07-0377 JAM DAD P

vs.

B. CURRY, Warden,

Respondent.

ORDER

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

On March 12, 2009, the court issued findings and recommendations, recommending that petitioner’s application for a writ of habeas corpus be dismissed as barred by the statute of limitations. The court advised petitioner that if he wished to respond and demonstrate to the court that he has filed this action within the applicable statute of limitations or is eligible for statutory or equitable tolling of the limitations period, he could do so by filing objections to the findings and recommendations. Petitioner has filed timely objections to the court’s findings and recommendations. Therein, he claims that he is entitled to equitable tolling of the statute of limitations based on his ongoing mental-health conditions.

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1 Good cause appearing, the court will vacate its findings and recommendations.  
2 Since petitioner may be entitled to relief if the claimed violation of constitutional rights is  
3 proved, respondent will be directed to file a response to petitioner's application for a writ of  
4 habeas corpus.

5 In accordance with the above, IT IS HEREBY ORDERED that:

6 1. The court's March 12, 2009 findings and recommendations (Doc. No. 16) are  
7 vacated;

8 2. Respondent is directed to file a response to petitioner's habeas petition within  
9 sixty days from the date of this order. See Rule 4, Fed. R. Governing § 2254 Cases. An answer  
10 shall be accompanied by all transcripts and other documents relevant to the issues presented in  
11 the petition. See Rule 5, Fed. R. Governing § 2254 Cases;

12 3. If the response to the habeas petition is an answer, petitioner's reply, if any,  
13 shall be filed and served within thirty days after service of the answer;

14 4. If the response to the habeas petition is a motion, petitioner's opposition or  
15 statement of non-opposition to the motion shall be filed and served within thirty days after  
16 service of the motion, and respondent's reply, if any, shall be filed and served within fifteen days  
17 thereafter; and

18 5. The Clerk of the Court shall serve a copy of this order, a copy of the petition  
19 for writ of habeas corpus pursuant to 28 U.S.C. § 2254, and a copy of the form regarding consent  
20 or request for reassignment on Michael Patrick Farrell, Senior Assistant Attorney General.

21 DATED: April 6, 2009.

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DALE A. DROZD  
UNITED STATES MAGISTRATE JUDGE