

1 Petitioner the opportunity to show cause why his Petition should not be denied due to its
2 untimeliness, this court will afford the Petitioner a final opportunity to respond.

3 The Petitioner directly appealed his state court conviction to the California Court
4 of Appeals which was adversely concluded as to the Petitioner in 1985. Apparently, he
5 did not seek review by the California Supreme Court of the action of the Court of Appeals.
6 It appears his right to seek relief in this court expired in 1987. He now realleges that
7 errors were committed during his 1983 trial that should be the basis for the granting of his
8 Petition. Obviously, such claims are precluded due to the expiration of the statute of
9 limitations set forth in the AEDPA.

10 Secondly, it appears that the Petitioner may be contending that he is actually
11 innocent by reasons of statements allegedly made some five years after Brinkley's
12 conviction by a fellow prisoner, now deceased, Jimmy Ray Smith, that it was he (Smith)
13 rather than the Petitioner who committed the crime(s) of which the Petitioner was
14 convicted. His petition seeking relief from the California state courts based upon these
15 alleged statements by the deceased fellow prisoner have been denied. While the AEDPA
16 precludes any federal claim by the Petitioner as to trial errors during the 1983 trial, "in
17 certain exceptional cases involving a compelling claim of actual innocence, the state
18 procedural bar is not a bar to a federal habeas corpus petition." *House v. Bell*, 547 U.S.
19 518, 521 (2006); *Schlup v. Delo*, 513 U.S. 298 (1995). As set forth in the foregoing
20 Supreme Courts case, to establish actual innocence as a gateway to defaulted claims, it
21 must be established that "in light of new evidence 'it is more likely than not that no
22 reasonable juror would have found petitioner guilty beyond a reasonable doubt'." *Bell @*
23 537. To establish the gateway claim, the new evidence must be both credible and new
24 *reliable* evidence such a scientific evidence, trustworthy eyewitness accounts, or critical
25 physical evidence that was not presented the initial trial. *Schlup @* 324. The difficulty
26 with the new evidence claim in this matter is that there is nothing to suggest that the
27 hearsay testimony of witnesses who allegedly heard Jimmy Ray Smith admit the offenses

