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

ANTONIO LOREDO MORALES,

Petitioner,

No. 08-CV-00382 JCW

vs.

MIKE KNOWLES, et al.,

Respondents.

OPINION AND ORDER

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Morales, a state prisoner, filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On April 17, 2009, all but one of Morales’ habeas claims were dismissed, and the respondents were ordered to respond to the remaining claim. On June 10, 2009, the respondents filed a motion to dismiss, arguing that Morales’ petition is barred by the statute of limitations. Morales opposed the motion.

**I.**

On July 1, 2004, a state court jury convicted Morales on charges of second-degree murder and engaging in criminal street gang activity. The jury also found

1 true an enhancement alleging that Morales committed the murder for the benefit of a  
2 criminal street gang. He was sentenced to 15 years to life imprisonment on the  
3 second-degree murder charge, 15 years to life imprisonment on the gang  
4 enhancement (to be served concurrently with the prison term for second-degree  
5 murder), and 3 years imprisonment on the gang activity charge (to be served  
6 consecutively to the other prison terms). Morales also admitted an allegation  
7 included in the indictment that he had served a prior prison term. On that charge, he  
8 was sentenced to one year imprisonment (to be served consecutively to the other  
9 prison terms). Judgment in Morales' case was entered on August 30, 2004.

10 Morales appealed from his conviction and sentence to the California Court of  
11 Appeal, Third District. On February 27, 2006, the state court of appeal upheld his  
12 convictions, but vacated the jury's true findings on the gang enhancement and struck  
13 the sentence imposed for that enhancement, and stayed the three-year sentence for  
14 the gang activity charge. On March 29, 2006, Morales petitioned the California  
15 Supreme Court for review. The California Supreme Court denied the petition on  
16 May 24, 2006. Morales did not file a petition for certiorari with the United States  
17 Supreme Court.

18 On January 31, 2008, Morales filed his federal habeas petition in the Northern  
19 District of California. After the case was transferred to the Eastern District of  
20 California, the petition was dismissed without prejudice due to a pleading defect. On  
21 November 12, 2008, Morales filed a corrected petition.

## 22 II.

23 Morales' petition is barred by the applicable statute of limitations. Pursuant to  
24 28 U.S.C. § 2244(d)(1)(A), a federal habeas petition must be filed within one year  
25 after "the date on which the [state court] judgment became final by the conclusion of  
26 direct review or the expiration of the time for seeking such review." "[D]irect

1 review” includes review by the United States Supreme Court. *Bowen v. Roe*, 188  
2 F.3d 1157, 1158-59 (9th Cir. 1999). Thus, a judgment becomes “final” under section  
3 2244(d)(1)(A) “in one of two ways – either by the conclusion of direct review by the  
4 highest court, including the United States Supreme Court, to review the judgment, or  
5 by the expiration of the time to seek such review, again from the highest court from  
6 which such direct review could be sought.” *Wixom v. Washington*, 264 F.3d 894,  
7 897 (9th Cir. 2001).

8 In this case, the California Supreme Court denied Morales’ petition for review  
9 on direct appeal on May 24, 2006. The time period within which to file a petition for  
10 writ of certiorari from the United States Supreme Court elapsed ninety days after that  
11 date, on August 22, 2006. *See, e.g., Bowen*, 188 F.3d at 1160, citing Sup. Ct. R. 13.  
12 Because he did not file a petition for certiorari, the state court judgment became final  
13 on August 22, 2006. Pursuant to section 2244(d)(1)(A), Morales had until August  
14 22, 2007 to file his federal habeas petition. Morales filed his petition on January 31,  
15 2008, well past that date. Therefore, absent tolling, his petition is untimely.

16 Morales argues that he is entitled to equitable tolling. Equitable tolling is  
17 “appropriate only if *extraordinary* circumstances beyond a prisoner’s control make it  
18 impossible to file a petition on time.” *Miranda v. Castro*, 292 F.3d 1063, 1066 (9th  
19 Cir. 2002) (quotation marks and citation omitted). Morales bears the burden of  
20 showing that extraordinary circumstances exist to justify equitable tolling. *Id.* at  
21 1065. He did not meet this burden.

22 First, Morales argues that he has “no knowledge of law and litigation and [his]  
23 level of intelligence and education is not very high.” He submits evidence that his  
24 reading and writing skills are below average, and that he asked for legal assistance  
25 from a fellow inmate in filing his amended habeas petition. In *Rasberry v. Garcia*,  
26 the Court of Appeals for the Ninth Circuit held that a pro se petitioner’s “lack of

1 legal sophistication is not, by itself, an extraordinary circumstance warranting  
2 equitable tolling.” 448 F.3d 1150, 1154 (9th Cir. 2006). Thus, under *Rasberry*,  
3 Morales’ argument for equitable tolling based on his lack of legal knowledge must  
4 be rejected. *See, e.g., id.* (denying equitable tolling to a pro se petitioner who argued  
5 that he was unable to calculate correctly the limitations period applicable to his  
6 habeas claims).

7 Second, Morales alleges that he has been on anti-psychotic agents during his  
8 incarceration. He further submits a Board of Prison Terms Summary of Revocation  
9 Decision, dated October 15, 2003, indicating that he had a “CCCMS” classification  
10 at that time, which means he participated in an outpatient program for mental health  
11 treatment. Mental incompetence may justify equitable tolling of the statute of  
12 limitations. *Laws v. Lamarque*, 351 F.3d 919, 923 (9th Cir. 2003), citing *Calderon v.*  
13 *U.S. District Court (Kelly)*, 163 F.3d 530, 541 (9th Cir. 1998) (en banc). However,  
14 “a petitioner’s mental incompetence [must have] in fact caused him to fail to meet the  
15 [federal habeas] filing deadline.” *Laws*, 351 F.3d at 923.

16 In this case, Morales does not allege, and his evidence does not indicate, that  
17 he was ever mentally incompetent. Moreover, even if I were to assume his  
18 incompetency, he provides no evidence that his mental health issues in fact caused  
19 him to miss the applicable filing deadline. Indeed, the only evidence he submitted to  
20 substantiate his claim of mental incompetence indicates that his purported mental  
21 health problems occurred *before* the one-year limitations period began in August  
22 2006. Thus, equitable tolling is not justified on this ground.

23 For these reasons, the respondents’ motion to dismiss is GRANTED.  
24 Accordingly, Morales’ petition is dismissed with prejudice as barred by the statute of  
25 limitations. The Clerk of Court is ordered to close this case; all pending motions are  
26 moot.

/s/ J. Clifford Wallace

1 DATED: August 24, 2009

2 J. Clifford Wallace  
3 United States Senior Circuit Judge

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