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

10 ERIC CHARLES K'nAPP,

11 Petitioner,

No. 2:08-cv-1040 JFM (HC)

12 vs.

13 WARDEN OF SALINAS VALLEY  
14 STATE PRISON,

15 Respondent.

ORDER

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18 Petitioner is a state prison inmate proceeding pro se with a petition for a writ of  
19 habeas corpus under 28 U.S.C. § 2254.<sup>1</sup> In 1993, petitioner was sentenced to 98 years in state  
20 prison following his conviction on multiple counts of rape, oral copulation, digital penetration,  
21 and sexual battery, as well as one count each of burglary and assault with a deadly weapon, all in  
22 violation of state law. Petitioner's commitment offenses involved two victims. In the instant  
23 petition, filed in March 2008, petitioner challenges the 1993 conviction and the sentence imposed  
24 thereon. The petition contains six claims: (1) newly discovered evidence of actual innocence as  
25 to one of the victims; (2) ineffective assistance of counsel at trial, sentencing and on appeal; (3)

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<sup>1</sup> The parties have consented to proceed before the undersigned pursuant to 28 U.S.C. § 636(c).

1 prosecutorial misconduct at trial; (4) jury prejudice; (5) cumulative errors; and (6) the sentence  
2 imposed is arbitrary, capricious and vindictive.

3 Respondent has filed a motion to dismiss claims two through six of the petition as  
4 barred by the one-year statute of limitations contained in 28 U.S.C. § 2244(d).<sup>2</sup> Petitioner has  
5 filed an opposition to the motion in which he contends, inter alia, that he is entitled to equitable  
6 tolling of the limitations period and that all of his claims are based, at least to some extent, on  
7 various pieces of newly discovered evidence. Respondent has not filed a reply brief. After  
8 review of the record, and good cause appearing, respondent will be directed to do so.

9 In accordance with the above, IT IS HEREBY ORDERED that within thirty days  
10 from the date of this order respondent shall file and serve a reply brief.

11 DATED: January 13, 2009.

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14 UNITED STATES MAGISTRATE JUDGE

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25 <sup>2</sup> Claim one of the petition is based on newly discovered evidence of alleged actual  
26 innocence of the crimes against one of the two victims. This claim was the subject of a 2006  
evidentiary hearing in state court and respondent does not contend that this claim is time-barred.