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

CLIFFORD KENNETH MYELLE,

Petitioner,

No. 2:09-cv-2919 JAM-KJN P

vs.

G. SWARTHOUT,

Respondent.

ORDER

\_\_\_\_\_ /

Petitioner is a state prisoner proceeding without counsel with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges a decision in 2007 by the California Board of Parole Hearings to deny him parole. Respondent’s motion to dismiss is pending. Respondent contends that petitioner’s claims are barred by the statute of limitations and that the petition must be dismissed.

On June 14, 2010, the United States Supreme Court held that § 2244(d) is subject to equitable tolling in appropriate cases. Holland v. Florida, \_\_\_\_ U.S. \_\_\_\_, 2010 WL 2346549 \*9 (2010). However, a litigant is entitled to equitable tolling only if he has diligently pursued his rights and “some extraordinary circumstance stood in his way.” Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005).

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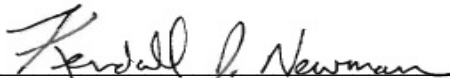
1 Here, neither party addressed the issue of equitable tolling. Accordingly, the court  
2 will order further briefing.

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

4 1. Within twenty-one days from the date of this order, plaintiff shall file a brief,  
5 signed under penalty of perjury, addressing whether he is entitled to equitable tolling for any  
6 portion of the statute of limitations period; and

7 2. Fourteen days thereafter, respondent shall file a reply.

8 DATED: June 15, 2010

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12 KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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