UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

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| LONNIE DAVID STRINGER,<br>Petitioner,<br>v.<br>JOHN MARSHALL,<br>Respondent. | No. 2:09-cv-2980-KJM-EFB P<br><br><br><br>ORDER |

Petitioner is a state prisoner with counsel seeking a writ of habeas corpus. *See* 28 U.S.C. § 2254. On March 31, 2011, this court granted respondent's motion to dismiss the action as barred by the statute of limitations contained in the Anti-terrorism and Effective Death Penalty Act ("AEDPA"). ECF No. 30. Later that year, the Ninth Circuit concluded that AEDPA's limitations provisions are subject to an equitable exception for claims of actual innocence. *Lee v. Lampert*, 653 F.3d 929 (9th Cir. 2011) (en banc). The United States Supreme Court agreed in 2013. *McQuiggin v. Perkins*, __ U.S. __, 133 S. Ct. 1924, 1928, 1933 (2013).

On appeal, the Ninth Circuit affirmed this court's determinations that: (1) petitioner is not entitled to statutory tolling; (2) the federal statute of limitations began to run when petitioner's conviction became final; and (3) petitioner is not entitled to equitable tolling. ECF No. 38.

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However, because this court did not consider whether petitioner qualified for the equitable exception based on actual innocence, the Ninth Circuit remanded the case for consideration of that single issue, citing *McQuiggin*. *Id.*

The court ordered supplemental briefing and the state court record to address the actual innocence issue. ECF No. 40. The court has received the record and the briefs, but stayed the case at petitioner's request while petitioner asked for DNA testing through the state courts. ECF No. 60. Although petitioner has provided several status reports regarding the progress of the DNA testing, he has not updated the court since January 31, 2018. Accordingly, it is hereby ORDERED that, within 14 days of the date of this order, petitioner shall file an update informing the court of the status of the state DNA testing.

So ordered.

Dated: February 27, 2019.

EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE