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

ZEFERINO ORTIZ VASQUEZ,

Petitioner,

No. 2:09-cv-03141 GEB KJN P

vs.

MICHAEL MARTEL, Warden, et al.,

Respondents.

ORDER

_____ /

Petitioner is a state prisoner proceeding through counsel with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On June 8, 2010, the court directed counsel to file a joint scheduling statement that complied with the court’s December 8, 2009 order, including a proposed expedited briefing schedule on respondents’ anticipated motion to dismiss. On June 28, 2010, counsel for petitioner filed a document entitled “Joint Scheduling Statement,” in which counsel for petitioner noted respondents’ counsel was unavailable at the time the joint statement was finalized. On July 1, 2010, respondents filed a motion to dismiss the petition as barred by the statute of limitations.

On July 7, 2010, counsel for respondents was directed to file a supplemental statement, which was filed on July 7, 2010. On July 21, 2010, petitioner filed a document entitled “Status Report On Opposition to Respondents’ Motion to Dismiss Petition for Writ of

1 Habeas Corpus . . . Motion to Stay Proceedings.” (Dkt. No. 31.) On July 22, 2010, respondents
2 filed an opposition to petitioner’s July 21, 2010 filing. On July 26, 2010, petitioner filed a
3 response to the opposition to the status report and provided a proposed order.

4 At bottom, petitioner seeks an order requiring respondents to provide petitioner
5 with copies of all state court records, as well as an extension of time in which to file an
6 opposition to the motion to dismiss. Respondents contend this action is time-barred and
7 production of the state court records is not appropriate or required. Respondents also argue
8 petitioner should not be allowed to file an opposition to the motion to dismiss as it is their
9 position that petitioner fully briefed its opposition in the status report.

10 This court finds that petitioner has failed to demonstrate why the state court
11 records are necessary to address respondents’ motion to dismiss this action as time-barred. There
12 is a one-year statute of limitations for filing a federal habeas petition seeking relief from a state
13 court judgment. 28 U.S.C. § 2244(d)(1). This limitations period is subject to equitable tolling.
14 Holland v Florida, 130 S.Ct. 2549, 2560 (2010). In order to obtain equitable tolling, petitioner
15 must demonstrate: “(1) that he has been pursuing his rights diligently, and (2) that some
16 extraordinary circumstances stood in his way.” Bryant v. Arizona Atty. Gen., 499 F.3d 1056,
17 1061 (9th Cir. 2007) (citation omitted).

18 Petitioner claims he “promptly sought relief” . . . “once he learned of his trial
19 counsel’s failure to follow his instructions and file the notice of appeal.” (Dkt. No. 33 at 6.)
20 However, petitioner concedes the first state petition was not filed until June 28, 2007. (Id.)
21 Petitioner has exhaustively briefed his position on the merits of his claim, that is, trial counsel
22 was allegedly ineffective based on his failure to file an appeal as requested by petitioner. Yet
23 petitioner has failed to (a) explain the delay in pursuing his state court remedies, (b) address his
24 diligence in pursuing his rights, or (c) address any extraordinary circumstances that allegedly
25 stood in his way. Moreover, petitioner has failed to demonstrate how or why the requested state
26 court records are relevant to the issue of untimeliness.

