(HC) Heredia v. Martel Doc. 17

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

AARON AUGUSTINE HEREDIA, No. CIV S-10-0693-GEB-CMK-P

Petitioner,

vs. ORDER

MICHAEL MARTEL,

Respondent.

_____/

Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pending before the court is respondent's motion to dismiss this petition as untimely (Doc. 14). In his opposition, petitioner notes that respondent failed to consider a state post-conviction action filed in the Solano County Superior Court when discussing the applicability of statutory tolling to this case. In reply, respondent concedes the error and withdraws his motion. Accordingly, the motion is withdrawn and respondent shall file an answer to the petition within 60 days of the date of this order.

IT IS SO ORDERED.

DATED: November 15, 2010

Craig M. Kellison

CRAIG M. KELLISON
UNITED STATES MAGISTRATE JUDGE

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