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

CROSSAN D. HOOVER, JR.,

Petitioner,

No. 2: 10-cv-1447 WBS KJN P

vs.

G. SWARTHOUT,

Respondent.

ORDER

_____ /

Petitioner is a state prisoner proceeding without counsel with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges his 2008 prison disciplinary conviction for possession of contraband (a cell phone) in violation of Cal. Code Regs. tit. 15, § 3006. This action is proceeding on the original petition filed June 11, 2010.

For the following reasons, respondent is order to file further briefing.

In the answer, respondent argues that this action is barred by the statute of limitations. In support of that argument, respondent argues that petitioner is not entitled to statutory tolling pursuant to 28 U.S.C. § 2244(d)(2). Respondent claims that petitioner filed a habeas corpus petition in the California Court of Appeal on August 10, 2010, which was summarily denied on August 16, 2010.

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1 In his reply to the answer, petitioner claims that he filed a petition in the
2 California Court of Appeal on August 25, 2010, challenging the at-issue prison disciplinary
3 which the state appellate court denied on October 1, 2010. Petitioner claims that the petition he
4 filed in the California Court of Appeal on August 10, 2010, concerned a decision by the
5 California Board of Parole Hearings.

6 Neither party has filed copies of the petitions filed by petitioner in the California
7 Court of Appeal in August 2010. However, petitioner had previously filed a petition in the
8 Solano County Superior Court challenging the at-issue prison disciplinary. (Dkt. No. 17-1, at
9 29.) The August 16, 2010 order by the California Court of Appeal contains a Marin County
10 Superior Court number. (Dkt. No. 17-1, at 39.) For these reasons, the undersigned agrees with
11 petitioner that the habeas action denied by the California Court of Appeal on August 16, 2010
12 appears to be unrelated to the instant action.¹

13 In order to determine whether petitioner is entitled to statutory tolling for his
14 habeas petition filed in the California Court of Appeal on August 25, 2010, the undersigned must
15 review the October 1, 2010 order denying this petition.

16 Accordingly, IT IS HEREBY ORDERED that within fourteen days of the date of
17 this order, respondent shall file a copy of the October 1, 2010 order by the California Court of
18 Appeal denying petitioner's habeas corpus petition challenging the at-issue prison disciplinary
19 conviction.

20 DATED: February 23, 2011

21 
KENDALL J. NEWMAN
22 UNITED STATES MAGISTRATE JUDGE

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24 _____
25 ¹ Respondent argues that petitioner filed a habeas corpus petition in the California Court
26 of Appeal in March 2009 addressing the at-issue prison disciplinary. As will be discussed in
findings and recommendations to issue, it appears that the March 2009 habeas petition filed by
petitioner in the California Court of Appeal did not concern the at-issue prison disciplinary.