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

FREDERICK ANDERSON,

Petitioner,

No. CIV S-10-1649 EFB P

vs.

JAMES WALKER,

Respondent.

ORDER

_____/

Petitioner, a state prisoner proceeding without counsel and in forma pauperis, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Dckt. No. 10. Prior to filing the instant petition, petitioner filed a motion for equitable tolling. Dckt. No. 5. The court’s July 15, 2010 order directing respondent to respond to the petition noted that it would address petitioner’s motion for equitable tolling after receiving respondent’s answer/motion and petitioner’s reply/opposition, if any. Dckt. No. 19. On September 13, 2010, respondent filed an answer to the petition, and on November 17, 2010, petitioner filed a reply. Dckt. Nos. 28, 34. The court now addresses the motion for tolling.

The Antiterrorism and Effective Death Penalty Act imposes a one-year limitations period for seeking federal habeas relief. 28 U.S.C. § 2244(d)(1). The limitations period may be equitably tolled where a habeas petitioner establishes two elements: (1) that he has been

1 pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way.
2 *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005). Here, respondent does not contest the
3 timeliness of the petition. Accordingly, petitioner's motion for equitable tolling, Dckt. No. 5, is
4 denied as unnecessary.

5 So ordered.

6 Dated: February 10, 2011.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE

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