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

NATHAN ANTHONY DORRIS,

Petitioner,

No. 2:10-cv-02482 FCD KJN P

vs.

D. ADAMS, Warden,

Respondent.

ORDER

_____ /

On March 31, 2011, this court ordered petitioner to show cause why he failed to respond to respondent’s pending motion to dismiss, and to file such opposition. Petitioner has timely filed a responsive “motion to proceed,” and an opposition (entitled “response”) to the motion to dismiss. The order to show cause is therefore discharged.

Petitioner contends that respondent’s motion to dismiss, premised on petitioner’s alleged failure to timely file his federal habeas corpus petition, is without merit. Although the case docket indicates that the petition was filed on September 10, 2010, petitioner contends that he gave the petition to prison officials for mailing on August 17, 2008, which is the date of petitioner’s signature on the petition. Petitioner contends that he is entitled to equitable tolling of the statute of limitations for the interval period.

Specifically, petitioner contends that he erroneously addressed his original petition

1 to the former address of the Fresno division of the United States District Court, Eastern District
2 of California, viz., “Clerk, U.S. District Court, Rm 5000[,] 1130 ‘O’ Street, Fresno California
3 93821¹ . . . not knowing that the new address was in effect [in Sacramento].” (Dkt. No. 17 at 3.)
4 Petitioner asserts that he addressed this petition to the outdated Fresno address because that was
5 the only address provided “in the Corcoran State Prison law library on 3A yard.” (Id.) Petitioner
6 asserts that he thereafter made repeated inquiries regarding the status of his petition, and has
7 attached copies of letters of inquiry, dated April 18, 2009, and September 8, 2010, addressed
8 respectively to “Court Clerk” and “The Court;” included with the second letter was a new copy
9 (with original dates) of the original petition. (Id. at 5-6.) The Fresno division relied on the new
10 copy of the petition to open this action on September 10, 2010 (Dkt. No. 1), and transfer the
11 action to the Sacramento division by order filed September 15, 2010 (Dkt. No. 3).

12 Petitioner contends that these facts demonstrate he has been diligent in pursuing
13 this case, but that extraordinary circumstances beyond his control rendered its opening untimely
14 (“due to the courts not forwarding his original writ or losing his original writ” (Dkt. No. 17 at3)).
15 The court requires additional information to assess petitioner’s contention and respondent’s
16 motion to dismiss.

17 Accordingly, IT IS HEREBY ORDERED that:

18 1. The order to show cause filed March 31, 2011 (Dkt. No. 16) is discharged;
19 petitioner’s “motion to proceed” with this action (Dkt. No. 19) is granted.

20 2. Respondent shall, within twenty-one days after the filing date of this order,
21 file a reply to petitioner’s opposition; such reply shall contain a copy of petitioner’s “Mail Card”
22 (CDC Form 119) (which itemizes petitioner’s in-coming and out-going legal mail) for the
23 relevant period (August 2008 through the present), which respondent shall obtain from
24 petitioner’s place of incarceration.

25 ¹ The address of Fresno’s “new” federal courthouse, opened in 2005, is 2500 Tulare Street,
26 Suite 1501, Fresno, CA 93721.

1 3. The court defers ruling on petitioner's motion for appointment of counsel (Dkt.
2 No. 18), and respondent's motion to dismiss (Dkt. No. 13).

3 DATED: May 6, 2011

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5 
6 KENDALL J. NEWMAN
7 UNITED STATES MAGISTRATE JUDGE

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