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

PAUL SANDOVAL,

Petitioner,

No. CIV S-10-3238 FCD DAD P

vs.

RICK HILL, Warden,

Respondent.

FINDINGS AND RECOMMENDATIONS

_____/

Petitioner, a state prisoner proceeding pro se, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the March 27, 2006 decision of the California Board of Parole Hearings (“Board”) to deny him parole. On December 22, 2010, the undersigned ordered respondent to file and serve a response to the petition. On January 14, 2011, respondent filed the pending motion to dismiss, arguing that petitioner’s habeas petition is time-barred under the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”). Petitioner has filed an opposition to the motion, and respondent has filed a reply.

BACKGROUND

On March 27, 2006, the Board conducted a parole hearing and found petitioner unsuitable for release on parole. The Board’s decision became final on July 25, 2006. (Pet. Ex. A.) Thereafter, petitioner filed three petitions for writ of habeas corpus in state court challenging

1 the Board's decision. Applying the mailbox rule¹, on April 24, 2007, petitioner filed a petition
2 for writ of habeas corpus in the San Diego County Superior Court. On December 17, 2008, that
3 court denied the petition. On March 13, 2009, petitioner filed a petition for writ of habeas corpus
4 in the California Court of Appeal for the Fourth Appellate District. On July 8, 2009, the Court of
5 Appeal denied that petition. On September 14, 2009, petitioner filed a petition for writ of habeas
6 corpus in the California Supreme Court. On August 11, 2010, the California Supreme Court
7 denied that petition. (Resp't's Mot. to Dismiss Exs. 1-8.)

8 On December 2, 2010, petitioner commenced this action by filing a federal
9 petition for writ of habeas corpus with this court.

10 **RESPONDENT'S MOTION TO DISMISS**

11 I. Respondent's Motion

12 Respondent moves to dismiss the pending habeas petition, arguing that it is time-
13 barred. Specifically, respondent argues that the Board's decision to deny petitioner parole
14 became final on July 25, 2006, and petitioner had one year thereafter in which to file a federal
15 habeas petition challenging that decision. Respondent contends that 273 days elapsed before
16 petitioner filed his first petition for writ of habeas corpus in the San Diego County Superior
17 Court. Respondent concedes that the statute of limitations was then tolled until August 11, 2010,
18 when the California Supreme Court denied petitioner's third and final petition for writ of habeas
19 corpus in state court. Respondent argues that from that date, however, an additional 113 days
20 elapsed before petitioner filed the pending federal petition. Accordingly, respondent contends
21 that by the time petitioner filed his federal habeas petition in this court, more than one year
22 (specifically, 386 days total) had elapsed rendering the petition untimely under the AEDPA
23 statute of limitations. (Resp't's Mot. to Dismiss at 4.)

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26 ¹ See Houston v. Lack, 487 U.S. 266, 276 (1988).

1 II. Petitioner’s Opposition

2 In opposition to respondent’s motion, petitioner argues that the one-year statute of
3 limitations in this case did not begin to run until December 17, 2008, when the San Diego
4 County Superior Court issued its denial of his petition for writ of habeas corpus. According to
5 petitioner, that is when he discovered his federal claims. (Pet’r’s Opp’n to Resp’t’s Mot. to
6 Dismiss at 3.)

7 III. Respondent’s Reply

8 In reply, respondent argues that the statute of limitations is triggered by the
9 Board’s decision denying parole and not by the San Diego County Superior Court’s denial of
10 state habeas relief. For the reasons stated in the pending motion to dismiss, respondent reiterates
11 that the pending federal habeas petition in this case is untimely. (Resp’t’s Reply at 2.)

12 **ANALYSIS**

13 I. The AEDPA Statute of Limitations

14 On April 24, 1996, Congress enacted AEDPA which amended 28 U.S.C. § 2244
15 by adding the following provision:

16 (d)(1) A 1-year period of limitation shall apply to an application
17 for a writ of habeas corpus by a person in custody pursuant to the
18 judgment of a State court. The limitation period shall run from the
latest of –

19 (A) the date on which the judgment became final by the
20 conclusion of direct review or the expiration of the time for
seeking such review;

21 (B) the date on which the impediment to filing an
22 application created by State action in violation of the Constitution
or laws of the United States is removed, if the applicant was
prevented from filing by such State action;

23 (C) the date on which the constitutional right asserted was
24 initially recognized by the Supreme Court, if the right has been
newly recognized by the Supreme Court and made retroactively
25 applicable to cases on collateral review; or

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1 (D) the date on which the factual predicate of the claim or
2 claims presented could have been discovered through the exercise
of due diligence.

3 (2) The time during which a properly filed application for State
4 post-conviction or other collateral review with respect to the
5 pertinent judgment or claim is pending shall not be counted toward
any period of limitation under this subsection.

6 The one-year AEDPA statute of limitations applies to all federal habeas corpus petitions filed
7 after the statute was enacted and therefore applies to the pending petition. See Lindh v. Murphy,
8 521 U.S. 320, 322-23 (1997).

9 II. Application of § 2244(d)(1)(D)

10 The one-year statute of limitations period set forth in 28 U.S.C. § 2244 “applies to
11 all habeas petitions filed by persons in ‘custody pursuant to the judgment of a State court,’ even
12 if the petition challenges an administrative decision rather than a state court judgment.” Shelby
13 v. Bartlett, 391 F.3d 1061, 1062 (9th Cir. 2004). See also Redd v. McGrath, 343 F.3d 1077,
14 1080-83 (9th Cir. 2003). When a habeas petitioner challenges an administrative decision,
15 § 2244(d)(1)(D) governs the date on which the limitation period begins to run. See Shelby, 391
16 F.3d at 1066; Redd, 343 F.3d at 1081-83. Under § 2244(d)(1)(D), the limitation period begins to
17 run once “the factual predicate of the claim or claims presented could have been discovered
18 through the exercise of due diligence.” 28 U.S.C. § 2244(d)(1)(D).

19 As noted above, on March 27, 2006, the Board conducted a parole hearing and
20 found petitioner unsuitable for release on parole. The Board’s decision became final on July 25,
21 2006. For purposes of federal habeas relief, the one-year statute of limitations period began to
22 run no later than July 26, 2006, the day after the Board’s decision became final, and expired one
23 year later on July 25, 2007. See Shelby, 391 F.3d at 1066; Redd, 343 F.3d at 1082. Applying the
24 mailbox rule, petitioner did not file his federal habeas petition in this court until December 2,
25 2010. Accordingly, the pending petition is untimely unless petitioner is entitled to the benefit of
26 tolling.

1 III. Application of § 2244(d)(2)

2 “The time during which a properly filed application for State post-conviction or
3 other collateral review with respect to the pertinent judgment or claim is pending shall not be
4 counted” toward the AEDPA statute of limitations. 28 U.S.C. § 2244(d)(2). The statute of
5 limitations is not tolled during the interval between the date on which a judgment becomes final
6 and the date on which the petitioner files his first state collateral challenge because there is no
7 case “pending.” Nino v. Galaza, 183 F.3d 1003, 1006 (9th Cir. 1999). Once a petitioner
8 commences state collateral proceedings, a state habeas petition is “pending” during a full round
9 of review in the state courts, including the time between a lower court decision and the filing of a
10 new petition in a higher court, as long as the intervals between the filing of those petitions are
11 “reasonable.” Carey v. Saffold, 536 U.S. 214, 222-24 (2002).

12 In this case, petitioner filed three habeas petitions in state court challenging the
13 Board’s 2006 decision to deny him parole. However, 273 elapsed under the statute of limitations
14 before petitioner filed his first petition for writ of habeas corpus in the San Diego County
15 Superior Court. Even granting petitioner statutory tolling for the entire time he was pursuing his
16 claims in state court, the pending petition is still untimely. The California Supreme Court denied
17 petitioner’s third and final state petition for writ of habeas corpus on August 11, 2011. An
18 additional 113 days elapsed under the statute of limitations before petitioner filed the pending
19 petition in this court. Accordingly, by the time petitioner filed his federal habeas petition in this
20 court on December 2, 2010, 386 days had elapsed under the AEDPA statute of limitations,
21 rendering petitioner’s federal habeas petition time-barred.

22 **CONCLUSION**

23 Accordingly, IT IS HEREBY RECOMMENDED that:

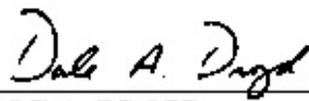
24 1. Respondent’s January 14, 2011 motion to dismiss (Doc. No. 11) be granted;

25 and

26 2. This action be closed.

1 These findings and recommendations are submitted to the United States District
2 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-
3 one days after being served with these findings and recommendations, any party may file written
4 objections with the court and serve a copy on all parties. Such a document should be captioned
5 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections
6 shall be served and filed within fourteen days after service of the objections. The parties are
7 advised that failure to file objections within the specified time may waive the right to appeal the
8 District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

9 DATED: April 4, 2011.

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12 _____
13 DALE A. DROZD
14 UNITED STATES MAGISTRATE JUDGE

12 DAD:9
13 sand3238.157