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

ISIAH DANIELS,

Petitioner,

No. CIV S-10-3347 KJM DAD P

vs.

G. SWARTHOUT, Warden,

Respondent.

FINDINGS AND RECOMMENDATIONS

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Petitioner, a state prisoner proceeding pro se, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On March 24, 2011, respondent filed the pending motion to dismiss, arguing that petitioner’s federal habeas petition is time-barred under the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”). Petitioner has filed an opposition to the motion.

BACKGROUND

On July 28, 2008, prison officials issued a rules violation report charging petitioner with sexual disorderly conduct. At petitioner’s disciplinary hearing, prison officials found him not guilty of that charge but instead found him guilty of visiting rule violations presenting a threat to institutional security. Petitioner challenged that guilty finding through the

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1 of a federal habeas petition began running the following day on May 15, 2009, and expired one
2 year later on May 14, 2010. According to respondent's calculation, the pending petition is
3 untimely because 140 days of the statute of limitations ran before petitioner's first petition for
4 writ of habeas corpus was filed in the Solano County Superior Court on October 2, 2009, and
5 another 229 days expired after the California Supreme Court denied his petition for state habeas
6 relief before he filed his federal petition in this court. Accordingly, respondent maintains that the
7 pending petition is untimely by four days and must be dismissed with prejudice. (Resp't's Mot.
8 to Dismiss at 3-4.)

9 II. Petitioner's Opposition

10 In opposition to respondent's motion to dismiss, petitioner argues that he is
11 entitled to statutory tolling for the entire period that he pursued habeas relief in state court.
12 Petitioner asks the court to allow the pending petition to proceed as timely filed. (Petn'r's Opp'n
13 to Resp't's Mot. to Dismiss at 2-3.)

14 **ANALYSIS**

15 I. The AEDPA Statute of Limitations

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

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

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

23 (B) the date on which the impediment to filing an
24 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;

25 (C) the date on which the constitutional right asserted was
26 initially recognized by the Supreme Court, if the right has been

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1 newly recognized by the Supreme Court and made retroactively
2 applicable to cases on collateral review; or

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

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

10 The one-year AEDPA statute of limitations applies to all federal habeas corpus petitions filed
11 after the statute was enacted and therefore applies to the pending petition. See Lindh v. Murphy,
12 521 U.S. 320, 322-23 (1997).

13 II. Application of § 2244(d)(1)(D)

14 The one-year statute of limitations period set forth in 28 U.S.C. § 2244 “applies to
15 all habeas petitions filed by persons in ‘custody pursuant to the judgment of a State court,’ even
16 if the petition challenges an administrative decision rather than a state court judgment.” Shelby
17 v. Bartlett, 391 F.3d 1061, 1062 (9th Cir. 2004). See also Redd v. McGrath, 343 F.3d 1077,
18 1080-83 (9th Cir. 2003). When a habeas petitioner challenges an administrative decision,
19 § 2244(d)(1)(D) governs the date on which the limitation period begins to run. See Shelby, 391
20 F.3d at 1066; Redd, 343 F.3d at 1081-83. Under § 2244(d)(1)(D), the limitation period begins to
21 run once “the factual predicate of the claim or claims presented could have been discovered
22 through the exercise of due diligence.” 28 U.S.C. § 2244(d)(1)(D).

23 In this case, the parties do not dispute that petitioner’s administrative appeal
24 challenging the disciplinary conviction at issue was denied at the director’s level of review on
25 May 14, 2009. For purposes of federal habeas relief, the one-year statute of limitations period
26 began to run no later than May 15, 2009, the day after the director’s level decision, and expired
one year later on May 14, 2010. See Shelby, 391 F.3d at 1066; Redd, 343 F.3d at 1082.

Applying the mailbox rule, petitioner did not file his federal habeas petition in this court until

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1 December 13, 2010. Accordingly, the pending petition is untimely by almost seven months
2 unless petitioner is entitled to the benefit of tolling.

3 III. Application of § 2244(d)(2)

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

14 Respondent contends that 140 days of the statute of limitations ran before
15 petitioner’s first habeas corpus petition was filed in the Solano County Superior Court.
16 However, respondent has not cited any authority or articulated any argument as to why
17 petitioner’s initial petition filed in the Sacramento County Superior Court was not properly filed
18 for purposes of § 2244(d)(2). Respondent simply assumes petitioner is not entitled to tolling
19 from the time his first state habeas petition was filed under the mailbox rule. This is not a case
20 where, for example, the state court rejected petitioner’s petition as untimely or for failure to
21 include proper verification. See Thorson v. Palmer, 479 F.3d 643 (9th Cir. 2007); Zepeda v.
22 Walker, 581 F.3d 1013 (9th Cir. 2009). Here, the Sacramento County Superior Court accepted
23 petitioner’s petition and transferred it to the Solano County Superior Court as state law and that
24 court’s local rules allow. See Griggs v. Superior Court, 16 Cal. 3d 341, 347 (1976) (“If the
25 challenge is to conditions of the inmate’s confinement, then the petition should be transferred to
26 the superior court of the county wherein the inmate is confined if that court is a different court

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 seven 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: September 8, 2011.

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13 DALE A. DROZD
14 UNITED STATES MAGISTRATE JUDGE

13 DAD:9
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