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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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ROBERT EDWARD MAURY,  
Plaintiff,  
v.  
RONALD DAVIS,  
Defendant.

No. 2:12-cv-1043 WBS DB  
DEATH PENALTY CASE  
ORDER

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Petitioner is a condemned state prisoner proceeding through counsel with a petition for writ of habeas corpus under 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On August 28, 2020, the Magistrate Judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within thirty days.

1 Respondent filed objections to the findings and recommendations.

2 Specifically, respondent argues that petitioner's  
3 motion for equitable tolling is premature under Smith v. Davis,  
4 953 F.3d 582 (9th Cir. 2020), and that Smith overruled Calderon  
5 v. U.S. Dist. Court for the Cent. Dist. Of Cal. (Beeler), 128  
6 F.3d 1283, 1285 (9th Cir. 1997), which upheld prospective  
7 equitable tolling of a time limitation. (See Request for  
8 Reconsideration at 3-7.) (ECF No. 184.) However, the question of  
9 prospective tolling of the Antiterrorism and Effective Death  
10 Penalty Act (AEDPA) statute of limitation was not before the  
11 court in Smith. Cowan v. Davis, No. 1:19-CV-00745-DAD, 2020 WL  
12 4698968 at \*4 (E.D. Cal. Aug. 13, 2020). Moreover, Smith does  
13 not expressly overrule or even mention Beeler, and is not  
14 irreconcilable with that decision. Id.

15 Thus, the court rejects respondent's contention that  
16 the Magistrate Judge's order is clearly erroneous or contrary to  
17 law. See Fed. R. Civ. P. 72(a); see also Local Rule 303(f).

18 In accordance with the provisions of 28 U.S.C. §  
19 636(b)(1)(C) and Local Rule 304, this court has conducted a de  
20 novo review of this case. Having carefully reviewed the entire  
21 file, the court finds the findings and recommendations to be  
22 supported by the record and by proper analysis.

23 IT IS THEREFORE ORDERED that:

24 1. The findings and recommendations filed August 28,  
25 2020 are adopted in full;

26 2. Petitioner's motion to stay these proceedings and  
27 equitably toll the statute of limitations (ECF No. 179) is  
28 granted;

1           3.    These proceedings are stayed through November 26,  
2 2020; and

3           4.    Petitioner is entitled to equitable tolling of the  
4 statute of limitations for an additional 90 days through  
5 September 7, 2020.

6 Dated:   October 2, 2020



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7 WILLIAM B. SHUBB  
8 UNITED STATES DISTRICT JUDGE  
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