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

DOUGLAS DWAYNE GIRLEY,

Petitioner,

No. 2:12-cv-1938 KJN P

vs.

GARY SWARTHOUT,

Respondent.

ORDER

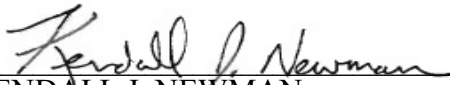
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By findings and recommendations filed March 26, 2013, the court found that the petition for writ of habeas corpus was filed four days, or alternatively one day, beyond the statute of limitations period, and recommended that respondent's motion to dismiss be granted. However, on April 22, 2013, petitioner filed an untimely opposition to the motion to dismiss, which this court construes as objections to the findings and recommendations. In his filing, petitioner claims that he relinquished his petition for writ of habeas corpus and application to proceed in forma pauperis to prison officials on July 11, 2012, and that after that date he had no control over the date the documents were actually mailed to the court. Moreover, petitioner provided a copy of the prison legal mail log for the relevant period, and, despite the fact that the court received the petition for writ of habeas corpus on July 24, 2012, there is no record of prison officials mailing such petition to the court.

1           In light of petitioner's filing, using the July 11, 2012 date as the date petitioner  
2 handed his filing to prison officials for mailing, or granting petitioner equitable tolling for the  
3 period between July 11, 2012 and July 24, 2012, based on petitioner's belief that he had no  
4 further control over the filing, or based on prison officials' failure to record the actual mailing of  
5 the petition, it appears the petition was filed within the limitations period. Thus, the court will  
6 grant respondent fourteen days in which to (a) inform the court he will withdraw the October 19,  
7 2012 motion to dismiss, or (b) file a reply to petitioner's April 22, 2013 objections.

8           Accordingly, IT IS HEREBY ORDERED that within fourteen days from the date  
9 of this order, respondent shall (a) inform the court he will withdraw the motion to dismiss or (b)  
10 file a reply to petitioner's objections.

11 DATED: May 17, 2013

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14 KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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