

1 Supreme Court on September 21, 2011. That judgment became final ninety days later, on
2 December 20, 2011, when the time for seeking review in the United States Supreme Court
3 expired. Rule 13, U.S. Supreme Court Rules; Tillema v. Long, 253 F.3d 494, 498 (9th Cir.
4 2001). Hence, absent equitable tolling, petitioner was required to file his federal habeas petition
5 within one year thereafter, on or before December 19, 2012. However, his federal petition was
6 filed on July 3, 2013, more than six months later. Petitioner states that his appellate counsel
7 failed to inform petitioner that the California Supreme Court denied review, despite petitioner's
8 repeated requests for information. Petitioner states that his mother also made several attempts to
9 contact counsel, who ultimately informed petitioner's mother, on June 8, 2013, that the petition
10 for review had been denied the previous September. Within the next month, petitioner filed the
11 instant federal petition.

12 Petitioner was informed by this court's prior order that "a petitioner is entitled to equitable
13 tolling only if he shows (1) that he has been pursuing his rights diligently, and (2) that some
14 extraordinary circumstance stood in his way and prevented timely filing." Lakey v. Hickman,
15 633 F.3d 782, 786 (9th Cir. 2011) (citations and internal quotation marks omitted).¹ The Ninth
16 Circuit has "agree[d] with our sister circuits that 'a prisoner's lack of knowledge that the state
17 courts have reached a final resolution of his case can provide grounds for equitable tolling if the
18 prisoner has acted diligently in the matter.'" Ramirez v. Yates, 571 F.3d 993, 997 (9th Cir. 2009)
19 (quoting Woodward v. Williams, 263 F.3d 1135, 1143 (10th Cir. 2001)). Once petitioner has this
20 information, he must continue to exercise reasonable diligence in pursuing relief. See, e.g.,
21 Spitsyn v. Moore, 345 F.3d 796, 802 (9th Cir. 2003) ("petitioner must also demonstrate that he
22 exercised reasonable diligence in attempting to file his habeas petition after the extraordinary

23 ¹ Petitioner was also informed that the "determination is highly fact-dependent and [petitioner]
24 bears the burden of showing that equitable tolling is appropriate." Espinoza-Matthews v.
25 California, 432 F.3d 1021, 1026 (9th Cir. 2005). "A petitioner must show that his untimeliness
26 was caused by an external impediment and not by his own lack of diligence." Bryant v. Arizona
27 Attorney General, 499 F.3d 1056, 1061 (9th Cir. 2007) (citing Roy v. Lampert, 465 F.3d 964, 973
28 (9th Cir. 2006)); see also Shannon v. Newland, 410 F.3d 1083, 1090 (9th Cir. 2005) (observing
that in each of the cases in which equitable tolling has been applied the requisite "extraordinary
circumstances" have been based on the "wrongful conduct" of another that "actually prevented
the prisoner from preparing or filing a timely habeas petition").

1 circumstances began”).

2 The undersigned finds, for present purposes only, that petitioner appears to have met these
3 requirements for equitable tolling. Petitioner states that he and his mother repeatedly sought the
4 pertinent information from appellate counsel, and expeditiously filed the instant petition upon
5 learning that his petition for review had been denied. The court’s provisional finding is without
6 prejudice to respondent later filing a motion to dismiss on statute of limitations grounds, should
7 respondent so choose, and will accord petitioner the opportunity to file an amended petition that
8 sets forth the substantive claims he seeks to pursue in this action.

9 The instant petition must be dismissed, with leave to file an amended petition, for the
10 following reasons. The current petition asserts two grounds for relief. “Ground One” asserts that
11 appellate counsel failed to timely inform petitioner of the denial of his petition for review.
12 However, “Ground One” is provisionally resolved by this order, and should not be reasserted in
13 an amended petition. “Ground Two” consists only of the notation, “Please see Opening Brief –
14 All Grounds 1-8” (ECF No. 1 at 6), and references an attached copy of the table of contents set
15 forth in petitioner’s petition for review before the California Supreme Court. However, each of
16 the claims referenced in “Ground Two” must be separately asserted in an amended petition, with
17 a brief statement of supporting facts. (Petitioner may make additional copies of page 5 of the
18 form habeas petition for this purpose.) Petitioner may assert only those claims that were “fairly
19 presented” to the state courts, and thus provided the California Supreme Court with an
20 opportunity to rule on the merits. See Picard v. Conner 404 U.S. 270, 275, 277-78 (1971);
21 Anderson v. Harless, 459 U.S. 4, 6 (1982); Batchelor v. Cupp, 693 f.2d 859, 862 (9th Cir. 1982).

22 Petitioner’s renewed request for appointment of counsel is denied without prejudice, for
23 the reasons stated in the court’s prior order (see ECF No. 10 at 1-2), and because there is as yet no
24 potentially cognizable petition.

25 Accordingly, IT IS HEREBY ORDERED that:

26 1. Petitioner’s petition for writ of habeas corpus is dismissed with leave to file an
27 amended petition within thirty days after service of this order.

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