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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MALCOLM SHEPARD,
Petitioner,
v.
CONNIE GIPSON,
Respondent.

No. 2:13-cv-1812 JAM AC P

ORDER

Petitioner, a state prisoner proceeding pro se, has filed this application for a writ of habeas corpus pursuant to 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 February 7, 2014, 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 twenty-one days. Respondent has filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a de novo review of this case. The date set forth in the findings and recommendations as the date of the summary denial of petitioner’s habeas petition filed in the

1 California Court of Appeal is herein corrected to March 7, 2013.¹ Having carefully reviewed the
2 entire file, the court finds the findings and recommendations to be otherwise supported by the
3 record and by proper analysis.

4 Accordingly, IT IS HEREBY ORDERED that:

5 1. The findings and recommendations filed February 7, 2014, are adopted with the
6 modification noted above;

7 2. Petitioner's motion for a stay (ECF No. 4) is denied for the reasons stated in the
8 findings and recommendations;

9 2. Respondent's request to dismiss the petition with prejudice based on its untimeliness is
10 denied as premature;

11 3. Respondent is directed to file an answer to the petition, or, in the alternative, a motion
12 to dismiss petitioner's habeas corpus petition, within thirty days from the date of this order;
13 petitioner's traverse or opposition to a motion to dismiss shall be filed and served within thirty
14 days thereafter, and respondent's reply, if any, shall be filed and served within fourteen days
15 following petitioner's opposition; and

16 4. Petitioner is directed to file any exhibits or documents supporting any request for
17 equitable tolling based on an alleged mental impairment along with his opposition to any motion
18 to dismiss.

19 DATED: June 10, 2014

20 /s/ John A. Mendez

21 UNITED STATES DISTRICT COURT JUDGE
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28 ¹ The date of the filing of the petition, February 17, 2013, was therein evidently inadvertently
transposed for the date of the summary denial. See Lodged Documents 7 and 8.