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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SIMON F. RANTEESI,
Petitioner,
v.
GARY SWARTHOUT,
Respondent.

No. 2:13-cv-2482 KJM CKD P

FINDINGS AND RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se and in forma pauperis, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. He asserts that a 2008 disciplinary conviction violated his due process rights. (ECF No. 1.) Before the court is respondent’s motion to dismiss the petition on the grounds that it is untimely, procedurally barred, and contains claims not cognizable in federal habeas. (ECF No. 14.) Petitioner has filed an opposition to the motion (ECF No. 15), and respondent has filed a reply (ECF No. 16). For the reasons set forth below, the court will recommend that respondent’s motion be granted.

ANALYSIS

I. Facts

In 2006, petitioner was convicted of first degree murder and sentenced to a term of 26 years to life in prison. (ECF No. 14-1 at 3.)

In April 2008, following a prison disciplinary hearing, petitioner was found guilty of refusing to work in violation of Cal. Code of Regulations Title 15, § 3041(a). (ECF No. 1 at 1.)

1 He filed an administrative appeal of the conviction, which was denied at the Director’s Level, the
2 final level of administrative review, on December 12, 2008. (ECF No. 14-1 at 22-23.)

3 On December 12, 2012, petitioner constructively filed a petition in the Solano County
4 Superior Court challenging the disciplinary conviction.¹ (ECF No. 14-1 at 2-16.) On February
5 20, 2013, the superior court denied the petition as untimely. (Id. at 50-51.) Petitioner filed a
6 successive petition in the superior court, which was denied on April 23, 2013. (Id. at 54-56.)
7 Petitioner also filed petitions challenging the conviction in the state appellate court and the
8 California Supreme Court, the latter of which was denied on June 26, 2013. (ECF No. 14-2 at 78-
9 80; see also ECF No. 15 at 3.)

10 On November 21, 2013, petitioner constructively filed the instant federal petition. (ECF
11 No. 1.)

12 II. Statute of Limitations Under the AEDPA

13 Because this action was filed after April 26, 1996, the provisions of the Antiterrorism and
14 Effective Death Penalty Act of 1996 (“AEDPA”) are applicable. See Lindh v. Murphy, 521 U.S.
15 320, 336 (1997); Clark v. Murphy, 331 F.3d 1062, 1067 (9th Cir. 2003). The AEDPA imposed a
16 one-year statute of limitations on the filing of federal habeas petitions. Title 28 U.S.C. § 2244
17 provides as follows:

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
26 ¹ “Under the mailbox rule, a prisoner’s pro se habeas petition is ‘deemed filed when he hands it
27 over to prison authorities for mailing to the relevant court.’” Huizar v. Carey, 273 F.3d 1220,
1222 (9th Cir. 2001); Houston v. Lack, 487 U.S. 266, 276 (1988). The mailbox rule applies to
28 federal and state petitions alike. See Stillman v. LaMarque, 319 F.3d 1199, 1201 (9th. Cir. 2003).

1 (C) the date on which the constitutional right asserted was
2 initially recognized by the Supreme Court, if the right has been
3 newly recognized by the Supreme Court and made retroactively
4 applicable to cases on collateral review; or

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

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

12 The AEDPA statute of limitations is tolled during the time a properly filed application for
13 post-conviction relief is pending in state court. 28 U.S.C. § 2244(d)(2). The statute of limitations
14 is not tolled during the interval between the date on which a decision becomes final and the date
15 on which the petitioner files his first state collateral challenge. Nino v. Galaza, 183 F.3d 1003,
16 1006 (9th Cir. 1999). Once state collateral proceedings are commenced, a state habeas petition is
17 “pending” during a full round of review in the state courts, including the time between a lower
18 court decision and the filing of a new petition in a higher court, as long as the intervals between
19 petitions are “reasonable.” See Evans v. Chavis, 546 U.S. 189, 192 (2006); Carey v. Saffold, 536
20 U.S. 214, 222-24 (2002).

21 III. Discussion

22 Where, as here, habeas petitioners challenge administrative decisions, AEDPA’s one-year
23 limitations period commences on “the date on which the factual predicate of the claim or claims
24 presented could have been discovered through the exercise of due diligence.” 28 U.S.C.A.
25 §2244(d)(1)(D). “As a general rule, the state agency’s denial of an administrative appeal is the
26 ‘factual predicate’ for such habeas claims.” Mardesich v. Cate, 668 F.3d 1164, 1172 (9th Cir.
27 2012), citing Redd v. McGrath, 343 F.3d 1077, 1085 (9th Cir. 2003). As petitioner’s
28 administrative appeal was denied at the Director’s Level on December 12, 2008, the limitations
period began on December 13, 2008 and, absent tolling, expired on December 13, 2009.

Petitioner did not file a state collateral challenge to the conviction until December 2012,
three years after the limitations period ended, and his petition to the superior court was expressly
denied as untimely. Thus, this and subsequent state petitions were not “properly filed” so as to

1 toll the running of the limitations period. Moreover, a state court habeas petition filed beyond the
2 expiration of AEDPA's statute of limitations does not toll the limitations period under
3 §2244(d)(2). See Ferguson v. Palmateer, 321 F.3d 820, 823 (9th Cir. 2003); Jiminez v. Rice, 276
4 F.3d 478, 482 (9th Cir. 2001). Accordingly, petitioner is not entitled to statutory tolling.

5 In opposition to the motion, petitioner argues that he is entitled to equitable tolling. The
6 limitations period is subject to equitable tolling if the petitioner demonstrates: "(1) that he has
7 been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his
8 way." Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005). Petitioner bears the burden of alleging
9 facts that would give rise to tolling. Id. at 418; Smith v. Duncan, 297 F.3d 809 (9th Cir. 2002).

10 Petitioner asserts that in April 2009 he received a letter from the Inmate Appeals Branch
11 stating that "there is no six month time constraint" on filing a lawsuit challenging his disciplinary
12 conviction. (ECF No. 15 at 4.) This letter is attached to the petition as Exhibit F. (ECF No. 1 at
13 46.) Petitioner seems to suggest that, based on this letter, he believed there was *no* deadline for
14 filing a state habeas petition. (ECF No. 15 at 4.) Such a belief does not entitle him to equitable
15 tolling. See Rasberry v. Garcia, 448 F.3d 1150, 1154 (9th Cir. 2006) (prisoner's ignorance of
16 AEDPA's requirements is not a basis for equitable tolling) (citing cases). Also, because
17 petitioner did not file a state habeas petition until December 2012, he fails to show diligence on
18 this record.

19 Petitioner further asserts that, at certain times, he was on lockdown or housed in
20 administrative segregation; that he was transferred to another prison; that he lacked education and
21 legal knowledge; and that he had limited time in the law library. (ECF No. 15 at 6.) None of
22 these are "extraordinary circumstances" that meet the high bar for equitable tolling under
23 AEDPA. Moreover, petitioner has made no substantial showing of diligence during the years
24 between his conviction becoming final in December 2008 and his first legal challenge to that
25 conviction in December 2012. Thus equitable tolling does not render the petition timely.

26 Based on the above, the undersigned will recommend that the petition be dismissed for
27 untimeliness and need not reach respondent's alternative arguments for dismissal.

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Accordingly, IT IS HEREBY RECOMMENDED THAT:

- 1. Respondent’s motion to dismiss the petition (ECF No. 14) be granted; and
- 2. This case be closed.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the objections shall be served and filed within fourteen days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: December 15, 2014



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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