

1 Petitioner has filed a document entitled a motion for stay and abeyance. (ECF No. 20.)
2 Therein, petitioner appears to concede that his claims are unexhausted. He seeks a stay of these
3 proceedings to file his claims in state court to exhaust them. However, staying these proceedings
4 will be fruitless if petitioner’s claims were filed too late. Respondent’s motion to dismiss did not
5 only raise the exhaustion issue. In that motion, respondent also argues that petitioner’s claims are
6 barred by the statute of limitations. Section 2244(d) (1) of Title 28 of the United States Code
7 contains a one-year statute of limitations for filing a habeas petition in federal court. The
8 limitations period runs from the date that the state court judgment becomes final by the
9 conclusion of direct review or the expiration of time to seek direct review. 28 U.S.C.
10 §2244(d)(1)(A); Porter v. Ollison, 620 F.3d 952, 958 (9th Cir. 2010). The time during which a
11 “properly filed” application for state post-conviction relief is pending does not count toward this
12 one-year period. § 2244(d)(2); Porter, 620 F.3d at 958.

13 A habeas petitioner is entitled to equitable tolling of AEDPA's one-year statute of
14 limitations only if the petitioner shows: “(1) that he has been pursuing his rights diligently, and
15 (2) that some extraordinary circumstance stood in his way' and prevented timely filing.” Holland
16 v. Florida, 560 U.S. 631, 649 (2010) (quoting Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005));
17 Ramirez v. Yates, 571 F.3d 993, 997 (9th Cir. 2009). An extraordinary circumstance must be
18 more than merely “oversight, miscalculation or negligence on the petitioner's part.” Waldron–
19 Ramsey v. Pacholke, 556 F.3d 1008, 1011 (9th Cir. 2009) (quoting Harris v. Carter, 515 F.3d
20 1051, 1055 (9th Cir. 2008)). Rather, petitioner must show that some external force “stood in his
21 way.” Id.

22 The court will give petitioner one final opportunity to file an opposition to respondent’s
23 motion to dismiss. Petitioner is advised that his failure to file a timely opposition will result in a
24 recommendation that this action be dismissed.

25 Accordingly, IT IS HEREBY ORDERED as follows:

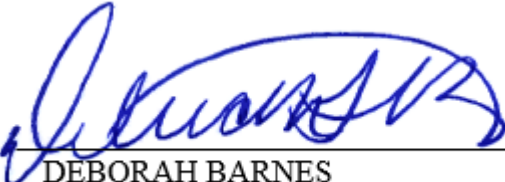
- 26 1. The court’s October 11, 2016 Findings and Recommendations (ECF No. 21) are
27 withdrawn; and

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2. Within thirty (30) days of the date of this order, petitioner shall address the statute of limitations issues raised by respondent in the June 2, 2016 motion to dismiss. Petitioner's failure to do so will result in a recommendation that this action be dismissed.

Dated: October 18, 2016



DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

DLB:9
DLB1/prisoner-habeas/Reyn2182.mtd oppo