

1 because it relied on facts that were not found beyond a reasonable doubt. On April 3, 2008, the
2 California Court of Appeal for the Third Appellate District rejected that claim and affirmed the
3 conviction. (Order in People v. Gomes Reynaldo, No. C054626 (LD 2).) Petitioner did not seek
4 direct review in the California Supreme Court.

5 Petitioner filed one state habeas petition in the California Supreme Court on August 2,
6 2009. (LD 3.) He raised the same claim he had raised on appeal. The California Supreme Court
7 denied the petition on January 13, 2010. (LD 4.) The court’s opinion states simply “The petition
8 for writ of habeas corpus is denied. (See *In re Waltreus* (1965) 62 Cal.2d 218.)” (Id.) A citation
9 to Waltreus indicates that the issues in the petition were raised on appeal. See Waltreus, 62 Cal.
10 2d at 225 (habeas “ordinarily cannot serve as a second appeal”).

11 Petitioner filed the present federal petition on October 17, 2015. (ECF No. 1.) Therein,
12 petitioner raises one claim – that he was sentenced to four years but has served far more time than
13 that.

14 Respondent moved to dismiss the petition on the grounds that it was untimely and
15 petitioner had not exhausted his state remedies. (See ECF No. 14.) In response, petitioner argued
16 that he should be entitled to equitable tolling of the statute of limitations because he is not
17 mentally competent, has limited English language skills, and is unfamiliar with the law.
18 Petitioner also sought stay and abeyance of these proceedings to permit him to exhaust. (See ECF
19 Nos. 20, 23.) Finally, petitioner mentioned other possible habeas claims in his opposition. (ECF
20 No. 23.)

21 The court determined that it had insufficient information to rule on the statute of
22 limitations issues because the court did not have petitioner’s mental health records. The court
23 then considered respondent’s statement that petitioner’s claim was, in any event, meritless
24 because petitioner had been sentenced to a term of nineteen years to life. The court ordered
25 petitioner to respond to respondent’s evidence showing that petitioner’s sentence was nineteen
26 years to life. The court further informed petitioner that if he wished to raise additional claims, he
27 must move to amend the petition. (ECF Nos. 32, 34.)

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1 In a document filed April 24, 2017, petitioner did not directly address respondent's
2 evidence showing the length of his sentence. Instead, petitioner states that his "jailhouse lawyer"
3 failed to fully exhaust all of petitioner's sentencing issues in the lower courts. Petitioner contends
4 that his mental health issues and severely limited grasp of the English language hindered his
5 ability to assist in preparation of his petition. Petitioner seeks dismissal of this action without
6 prejudice so that he may exhaust the "constitutional claims surrounding the totality of sentencing
7 issues." (ECF No. 35.)

8 DISCUSSION

9 Petitioner contends he is a mentally ill inmate with limited English skills who is relying
10 on the help of other inmates in these legal proceedings. While the claim made in petitioner's
11 petition does not appear to have merit, petitioner seems to be attempting to raise other claims. In
12 his opposition to the motion to dismiss, petitioner mentions a number of claims not made in his
13 petition. In addition to the subject of his appeal – that the trial court committed a sentencing error
14 in relying on some aggravating factors that had not been found by a jury – petitioner also appears
15 to contend that his trial counsel was ineffective for failing to raise the sentencing error issue and
16 for allowing petitioner to waive his right to trial by jury. Finally, petitioner mentions translation
17 problems at trial, though he does not explain how he was prejudiced by those problems. (See
18 ECF No. 23.) In petitioner's April 24 filing, he again indicates, though with no specificity, that
19 he may have other claims regarding his sentencing. (See ECF No. 35.)

20 As respondent has pointed out, and as petitioner concedes, none of these issues have been
21 exhausted. However, petitioner's request for dismissal of the present action indicates that he does
22 not understand that he may attempt to exhaust his state court remedies at the same time he is
23 proceeding in this court. In other words, petitioner is not prevented from filing claims in state
24 court just because he is proceeding in federal court.

25 If the court accepts petitioner's dismissal of the petition, petitioner risks further statute of
26 limitations complications if he returns and files another petition. The court is required to treat pro
27 se filings liberally. See Hebbe v Pliler, 627 F.3d 338, 342 (9th Cir. 2010). Such care is
28 particularly important in this case where petitioner alleges both mental illness and lack of English

1 language skills hinder his ability to proceed in a legal action. See Chick v. Chavez, 518 Fed.
2 App’x 567, 569 (9th Cir. 2013) (further factual development necessary where records show
3 petitioner had some mental impairment that might justify equitable tolling); Winston v. Myles,
4 No. 2:12-cv-1844-JAD-CWH, 2014 WL 1236546, at *2 (D. Nev. Mar. 25, 2014) (same);


5 The court will consider petitioner’s recent filings as attempts to amend his petition to
6 assert new claims. However, recognizing that any amendment will be futile if petitioner’s
7 original petition was untimely,¹ the court will re-open consideration of the statute of limitations
8 and equitable tolling issues.

9 Accordingly, and good cause appearing, IT IS HEREBY ORDERED that:

- 10 1. Petitioner’s request to dismiss his petition (ECF No. 35) is denied without prejudice;
11 and
- 12 2. Within thirty days of the date of this order, respondent shall provide the court with a
13 copy of petitioner’s mental health records from the date of his incarceration in 2007
14 through the present. Respondent shall lodge those records with the court under seal
15 either in paper or by e-mailing them to ApprovedSealed@caed.uscourts.gov. Until
16 ordered to do so, neither party shall file further briefs regarding petitioner’s argument
17 that his mental incompetence qualifies him for equitable tolling of the statute of
18 limitations.

19 Dated: May 30, 2017

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22 DLB:9
23 DLB1/prisoner-habeas/reyn2182.eq toll

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27 
28 DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

¹ In making this statement, the court expresses no opinion about whether any new claims would “relate back” to the claim made in the original petition.