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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NOAH H. O. BATTLE,
Petitioner,
v.
JOEL MARTINEZ,
Respondent.

No. 2:16-cv-0411 TLN CKD P

FINDINGS AND RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This action proceeds on the petition filed February 25, 2016. (ECF No. 1 (“Ptn.”)) Before the court is respondent’s motion to dismiss the petition as untimely. (ECF No. 16.) Petitioner has filed an opposition (styled as a “traverse”), and respondent has filed a reply. (ECF Nos. 22 & 23.) For the reasons set forth below, the undersigned will recommend that respondent’s motion be granted.

FACTUAL AND PROCEDURAL HISTORY

In 2009, an information was filed in Solano County charging petitioner with multiple counts based on the repeated stabbing of petitioner’s girlfriend, Danielle Witt, with a ten-inch kitchen knife. Witt underwent several surgeries, followed by speech and physical therapy. As a result of the attack, her face was permanently paralyzed. (Resp’s Ex. B., ECF No. 16-1.)

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1 In February 2010, petitioner's first trial concluded with the jury acquitting petitioner of
2 the attempted murder count but failing to reach a verdict on the remaining two counts. (Id.)

3 The case was retried, and in November 2010, a Solano County jury convicted petitioner of
4 corporal injury to a spouse or cohabitant, and assault with a deadly weapon by means likely to
5 produce great bodily injury. (Cal. Penal Code §§ 273.5(a), 245(a)(1).) The jury also found true
6 an enhancement for great bodily injury as to each count. In 2011, the trial court sentenced
7 petitioner to an aggregate prison term of ten years. (Id.)

8 Petitioner appealed the judgment, which was affirmed by the state court of appeal on
9 August 30, 2012. (Resp's Ex. B.) The California Supreme Court denied review on November
10 14, 2012. (Resp's Ex. C, ECF No. 16-1.)

11 On May 15, 2015, petitioner filed a petition for writ of habeas corpus in the Solano
12 County Superior Court. (Ptn. at 3.) On July 13, 2015, the superior court denied the petition as
13 untimely. (Ptn., Ex. 7.)

14 Petitioner filed a habeas petition in the Court of Appeal for the First Appellate District,
15 which summarily denied the petition on September 17, 2015. (Id.)

16 Petitioner filed a habeas petition in the California Supreme Court, which summarily
17 denied the petition on January 27, 2016. (Id.)

18 Petitioner constructively filed his federal petition on February 22, 2016.

19 STATUTE OF LIMITATIONS UNDER THE AEDPA

20 Because this action was filed after April 26, 1996, the provisions of the Antiterrorism and
21 Effective Death Penalty Act of 1996 ("AEDPA") are applicable. See Lindh v. Murphy, 521 U.S.
22 320, 336 (1997); Clark v. Murphy, 331 F.3d 1062, 1067 (9th Cir. 2003). The AEDPA imposed a
23 one-year statute of limitations on the filing of federal habeas petitions. Title 28 U.S.C. § 2244
24 provides as follows:

25 (d)(1) A 1-year period of limitation shall apply to an application
26 for a writ of habeas corpus by a person in custody pursuant to the
27 judgment of a State court. The limitation period shall run from the
latest of –

28 (A) the date on which the judgment became final by the
conclusion of direct review or the expiration of the time for seeking

1 such review;

2 (B) the date on which the impediment to filing an
3 application created by State action in violation of the Constitution
4 or laws of the United States is removed, if the applicant was
5 prevented from filing by such State action;

6 (C) the date on which the constitutional right asserted was
7 initially recognized by the Supreme Court, if the right has been
8 newly recognized by the Supreme Court and made retroactively
9 applicable to cases on collateral review; or

10 (D) the date on which the factual predicate of the claim or
11 claims presented could have been discovered through the exercise
12 of due diligence.

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

17 The AEDPA statute of limitations is tolled during the time a properly filed application for
18 post-conviction relief is pending in state court. 28 U.S.C. § 2244(d)(2). The statute of limitations
19 is not tolled during the interval between the date on which a decision becomes final and the date
20 on which the petitioner files his first state collateral challenge. Nino v. Galaza, 183 F.3d 1003,
21 1006 (9th Cir. 1999). Once state collateral proceedings are commenced, a state habeas petition is
22 “pending” during a full round of review in the state courts, including the time between a lower
23 court decision and the filing of a new petition in a higher court, as long as the intervals between
24 petitions are “reasonable.” See Evans v. Chavis, 546 U.S. 189, 192 (2006); Carey v. Saffold, 536
25 U.S. 214, 222-24 (2002).

26 ANALYSIS

27 I. Commencement of the Running of the Limitation Period

28 Under § 2244(d)(1)(A), the limitation period begins to run on “the date on which the
judgment became final by the conclusion of direct review or the expiration of the time for seeking
such review.” See Wixom v. Washington, 264 F.3d 894, 897 (9th Cir. 2001). The statute
commences to run pursuant to § 2244(d)(1)(A) upon either 1) the conclusion of all direct criminal
appeals in the state court system, followed by either the completion or denial of certiorari
proceedings before the United States Supreme Court; or 2) if certiorari was not sought, then by

1 the conclusion of all direct criminal appeals in the state court system followed by the expiration
2 of the time permitted for filing a petition for writ of certiorari. Wixom, 264 F.3d at 897 (quoting
3 Smith v. Bowersox, 159 F.3d 345, 348 (8th Cir.1998), cert. denied, 525 U.S. 1187 (1999)).

4 Here, petitioner appealed his judgment of conviction. The California Supreme Court
5 denied review on November 14, 2012. The time to seek direct review ended on February 12,
6 2013, when the 90-day period for filing a petition for writ of certiorari with the United States
7 Supreme Court expired. Supreme Court Rule 13. The one-year limitations period began to run
8 the following day. Patterson v. Stewart, 251 F.3d 1243, 1246 (9th Cir. 2001) (citing Fed. R. Civ.
9 P 6(a)). Thus the last day to file a petition was on February 12, 2014, plus any time for tolling.

10 Petitioner asserts that he is entitled to a delayed commencement of the limitations period
11 due to “newly discovered evidence undermining the prosecution’s case”: specifically, a photo
12 showing defensive wounds on petitioner’s right hand. (Ptn. at 5.) Petitioner states that he did not
13 receive this evidence from his trial counsel until May 13, 2015, and that it supports his “actual
14 innocence” claim. (Id. at 6; see also ECF No. 22 at 7-12.) Petitioner submits a copy of the photo,
15 along with a copy of his letter to the Alternate Public Defender in April 2015, requesting the
16 photo. (Ptn. at 43-44.) In the letter, petitioner states that “[t]his particular photo . . . was used in
17 the trial for our defense as Exhibit B. I still do not have this photo. . . . I can use it as an exhibit
18 for my habeas petition. It is a vital photo for asking for an order to show cause or evidentiary
19 hearing in my petition for relief.” (Id. at 44.)

20 Under § 2244(d)(1)(D), AEDPA’s statute of limitations begins to run when the petitioner
21 knows or through diligence could discover the important facts, not when petitioner discovers their
22 legal significance. Hasan v. Galaza, 254 F.3d 1150, 1154 & n. 3 (9th Cir. 2001). As petitioner’s
23 own letter states that the photo was known to the defense at trial, it is not “newly discovered
24 evidence” under § 2244(d)(1)(D) and does not delay the running of the AEDPA clock.

25 Petitioner commenced this federal habeas action on February 22, 2016¹, more than two

26 ¹ Habeas Rule 3(d) reflects the “mailbox rule,” initially developed in case law, pursuant to which
27 a prisoner’s pro se habeas petition is “deemed filed when he hands it over to prison authorities for
28 mailing to the relevant court.” Houston v. Lack, 487 U.S. 266, 276 (1988); Huizar v. Carey, 273
F.3d 1220, 1222 (9th Cir. 2001). The mailbox rule applies to federal and state petitions alike.

1 years past the AEDPA deadline. Thus, absent tolling, the petition is untimely.

2 II. Statutory Tolling

3 Title 28 U.S.C. § 2244(d)(2) states that the “time during which a properly filed application
4 for State post-conviction or other collateral review with respect to the pertinent judgment or claim
5 is pending shall not be counted toward” the one-year limitation period. 28 U.S.C. § 2244(d)(2).

6 Petitioner’s first state habeas petition was filed on May 15, 2015 and was denied by the
7 superior court as untimely. State time limits are conditions to filing which render a petition not
8 properly filed. Pace v. DiGuglielmo, 544 U.S. 408, 417 (2005). When a state court rejects a
9 petition for post-conviction relief as untimely, the petition is not a “properly filed” application for
10 post-conviction or collateral review within the meaning of § 2244(d)(2) and does not toll the
11 running of the limitation period. Id.

12 Moreover, the tolling provision of § 2244(d)(2) can only pause a clock not yet fully run; it
13 cannot “revive” the limitations period once it has run (i.e., restart the clock to zero). Thus, a state
14 court habeas petition filed beyond the expiration of AEDPA’s statute of limitations does not toll
15 the limitations period under § 2244(d)(2). See Ferguson v. Palmateer, 321 F.3d 820, 823 (9th Cir.
16 2003); Jiminez v. Rice, 276 F.3d 478, 482 (9th Cir. 2001). For both these reasons, petitioner is
17 not entitled to statutory tolling.

18 III. Equitable Tolling

19 Petitioner asserts that the petition is timely due to equitable tolling of the AEDPA
20 limitations period, as he suffered a mental disorder during the one-year statute of limitations
21 period. (Ptn. at 8.) In order to address this argument while protecting petitioner’s medical
22 privacy, respondent sought leave to file both the motion to dismiss and two hundred pages of
23 petitioner’s medical records under seal; this request was granted. (ECF No. 18.)

24 The AEDPA statute of limitations may be subject to equitable tolling if a petitioner can
25 demonstrate that (1) he had been pursuing his rights diligently, and (2) some extraordinary

26 Campbell v. Henry, 614 F.3d 1056, 1058–59 (9th Cir. 2010). The mailbox rule in effect assumes
27 that absent evidence to the contrary, a legal document is filed on the date it was delivered to
28 prison authorities, and a petition was delivered on the day it was signed. Houston, 487 U.S. at
275–76; Roberts v. Marshall, 627 F.3d 768, 770 n. 1 (9th Cir. 2010).

1 circumstance prevented him from filing on time. Holland v. Florida, 130 S. Ct. 2549, 2562
2 (2010). Petitioner must show that the “extraordinary circumstance” was the cause of the
3 untimeliness. See Spitsyn v. Moore, 345 F.3d 796, 799 (9th Cir. 2003). Equitable tolling is
4 “unavailable in most cases.” Miranda v. Castro, 292 F.3d 1063, 1066 (9th Cir. 2002), citing
5 Miles v. Prunty, 187 F.3d 1104, 1107 (9th Cir. 1999).

6 In Bills v. Clark, 628 F.3d 1092 (9th Cir. 2010), the Ninth Circuit set forth a two-part test
7 to determine a petitioner's eligibility for equitable tolling due to mental impairment:

8 (1) First, a petitioner must show his mental impairment was an
9 “extraordinary circumstance” beyond his control, by demonstrating
the impairment was so severe that either

10 (a) petitioner was unable rationally or factually to personally
11 understand the need to timely file, or

12 (b) petitioner’s mental state rendered him unable personally
to prepare a habeas petition and effectuate its filing.

13 (2) Second, the petitioner must show diligence in pursuing the
14 claims to the extent he could understand them, but that the mental
15 impairment made it impossible to meet the filing deadline under the
totality of the circumstances, including reasonably available access
to assistance.

16 Bills, 628 F.3d at 1099–1100 (internal citations omitted).

17 The court has reviewed petitioner’s mental health records for the period beginning in
18 February 2013, when the limitations period began, and continuing through petitioner’s July 2014
19 discharge from the prison’s mental health system. (ECF No. 16-1, Ex. A.) In summary the
20 records show that, while petitioner suffered from major depressive disorder and was briefly
21 suicidal, there is scant evidence that his cognition or thought processes were significantly
22 impaired during this period. Rather, petitioner is consistently described in medical notes as alert,
23 cooperative, goal-directed, stable and similar terms, with no indication of psychotic or delusional
24 symptoms.

25 In May 2013, petitioner was placed in the Enhanced Outpatient Program (EOP) for
26 depression, for which he was medicated, and within months was anticipating transfer to a lower
27 level of care. During his time in EOP, petitioner suffered bouts of anxiety, but at other times
28 reported feeling good and making future plans. On July 1, 2014, petitioner was discharged from

1 the prison mental health system, as his depression had improved and he and had been off
2 medications for six months. Petitioner filed his first state habeas petition in May 2015, nearly a
3 year later.

4 On this record, petitioner has not shown that he was unable to understand the need to
5 timely file a habeas petition, or that his mental state prevented him from filing, during the
6 limitations period. See Yeh v. Martel, 751 F.3d 1075, 1078 (9th Cir. 2014) (to warrant equitable
7 tolling under Bills, “the mental impairment must be so debilitating that it is the but-for cause for
8 the delay, and even in cases of debilitating impairment the petitioner must still demonstrate
9 diligence.”). Nor has petitioner shown the requisite diligence, as he delayed pursuing habeas
10 remedies even after his depression improved, he was no longer medicated, and he was discharged
11 from the prison’s mental health program.

12 As petitioner does not meet the high bar for equitable tolling of the AEDPA limitations
13 period, the undersigned will recommend dismissal of this action for untimeliness.

14 Accordingly, IT IS HEREBY RECOMMENDED that respondent’s motion to dismiss
15 (ECF No. 16) be granted and this case closed.

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

24 Dated: February 1, 2017

25 
26 CAROLYN K. DELANEY
27 UNITED STATES MAGISTRATE JUDGE