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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN BROXTON,
Petitioner,
v.
E. ARNOLD,
Respondent.

No. 2: 16-cv-1548 GEB KJN P

FINDINGS & RECOMMENDATIONS

I. Introduction

Petitioner is a state prisoner, proceeding without counsel, with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This action proceeds on the petition filed July 1, 2016, pursuant to the mailbox rule. Petitioner challenges his 2011 convictions for second degree robbery. Pending before the court is respondent’s motion to dismiss on grounds that this action is barred by the statute of limitations. (ECF No. 11.) For the reasons stated herein, the undersigned recommends that respondent’s motion be granted.

II. Statute of Limitations

The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), which became law on April 24, 1996, imposed for the first time a statute of limitations on petitions for a writ of habeas corpus filed by state prisoners. This statute of limitations provides that,

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

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

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

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

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

12 28 U.S.C. § 2244 (d)(1).

13 The California Supreme Court denied petitioner’s petition for review on August 27, 2014.
14 (Respondent’s Lodged Document 4.) Therefore, petitioner’s conviction became final 90 days
15 later on November 25, 2014, when the period for filing a petition for writ of certiorari with the
16 United States Supreme Court expired. See Bowen v. Roe, 188 F.3d 1157 (9th Cir. 1999). The
17 one year limitations period commenced running the following day, i.e., November 26, 2014. See
18 Patterson v. Stewart, 251 F.3d 1243, 1246 (9th Cir. 2001).

19 The instant action is not timely unless petitioner is entitled to statutory or equitable tolling.

20 III. Statutory Tolling

21 *Legal Standard*

22 Section 2244(d)(2) suspends the limitations period not only for the time during which a
23 “properly-filed” application for post-conviction relief is “pending” in state court but also, in
24 appropriate circumstances, “during the intervals between the denial of a petition by one court and
25 the filing of a new petition at the next level, if there is not undue delay.” Biggs v. Terhune, 339
26 F.3d 1045, 1046 (9th Cir. 2003); see also Carey v. Saffold, 536 U.S. 214, 219-225 (2002) (in
27 California cases, a post-conviction matter is “pending” between the denial of a petition in a lower
28 court and the filing, “within a reasonable time,” of a “further original state habeas petition in a

1 higher court”). Continuous tolling under Section 2244(d)(2)—commonly referred to as interval
2 or gap tolling—is available only if a prisoner acted promptly in seeking relief at the next state
3 court level. See Evans v. Chavis, 546 U.S. 189, 191-92 (2006); Pace v. DiGuglielmo, 544 U.S.
4 408, 413-14 (2005).

5 The statute of limitations is not tolled between the time the petitioner’s conviction
6 becomes final on direct review and the time the first state collateral challenge is filed because
7 there is no case “pending” during that time. Thorson v. Palmer, 479 F.3d 643, 646 (9th Cir.
8 2007).

9 *Background of State Court Petitions*

10 Pursuant to the mailbox rule, petitioner filed his first state habeas petition in the
11 Sacramento County Superior Court on January 30, 2013. (Respondent’s Lodged Document 5.)
12 The Superior Court denied this petition on March 13, 2013. (Respondent’s Lodged Document 6.)

13 Pursuant to the mailbox rule, petitioner filed his next state habeas petition in the California
14 Supreme Court on February 7, 2016. (Respondent’s Lodged Document 7.) The California
15 Supreme Court denied this petition, without comment or citation, on April 20, 2016.
16 (Respondent’s Lodged Document 8.)

17 *Discussion*

18 Petitioner is not entitled to statutory tolling for his first state habeas petition because it was
19 denied before the effective date of the statute of limitations. See Waldrip v. Hall, 548 F.3d 729,
20 735 (9th Cir. 2008) (state petition denied before statute of limitations started to run “had no effect
21 on the timeliness of the ultimate federal filing”).

22 Petitioner is not entitled to statutory tolling for the petition filed in the California Supreme
23 Court because it was filed after the statute of limitations expired. Ferguson v. Palmateer, 321
24 F.3d 820, 823 (9th Cir. 2003) (“[S]ection 2244(d) does not permit the reinitiation of the
25 limitations period that has ended before the state petition was filed.”); Jiminez v. Rice, 276 F.3d
26 478, 482 (9th Cir. 2001) (filing a state habeas petition after the AEDPA statute of limitations had
27 expired “resulted in an absolute time bar”).

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1 For the reasons stated herein, the undersigned also finds that petitioner is not entitled to
2 gap tolling for the almost three years between the time the Superior Court denied his petition and
3 when he filed his petition in the California Supreme Court.¹

4 Under California law, a habeas petition is timely only if filed within a “reasonable time.”
5 See Chavis, 546 U.S. at 192. Because “California courts had not provided authoritative guidance
6 on this issue,” the Supreme Court in Chavis “made its own conjecture ... ‘that California’s
7 “reasonable time” standard would not lead to filing delays substantially longer than’ between 30
8 and 60 days.” Robinson v. Lewis, 795 F.3d 926, 929 (9th Cir. 2015) (quoting Chavis, 546 U.S. at
9 199). However, if a petitioner demonstrates good cause, California courts allow a longer delay.
10 Robinson, 795 F.3d at 929 (citing In re Robbins, 18 Cal.4th 770, 780 (Cal. 1998)). A petition that
11 has been substantially delayed may nevertheless be considered on the merits if the petitioner can
12 establish good cause for the delay, such as investigation of a potentially meritorious claim, or to
13 avoid piecemeal presentation of claims. Robbins, 18 Cal.4th at 780.

14 When the timeliness of a federal habeas petition is at issue, and there is not clear
15 indication by the state court whether or not the underlying claim was timely, “the federal court
16 ‘must itself examine the delay in each case and determine what the state courts would have held
17 in respect to timeliness.’” Stewart v. Cate, 757 F.3d 929, 935 (9th Cir. 2014) (quoting Chavis.)
18 In other words, even if the California court did not expressly address the timeliness issue, a
19 federal habeas court must do so when faced with an interval tolling question.

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22 ¹ To be entitled to gap tolling, subsequent petitions must be “limited to an elaboration of the
23 facts relating to the claims in the first petition.” Stancle v. Clay, 692 F.3d 948, 953 (9th Cir.
24 2012). The petition filed in the California Supreme Court raised the following claims.
25 (Respondent’s Lodged Document 7.) Petitioner argued that the trial court failed to sever his case
26 from his co-defendant’s case, and that his trial counsel was ineffective for failing to challenge this
27 ruling. (Id.) Petitioner also argued that he was subjected to a suggestive line-up procedure. (Id.)
28 Although somewhat difficult to understand, it appears that the petition filed in the Superior Court
raised these same claims. (Respondent’s Lodged Documents 5, 6.)

The undersigned also observes that it appears from Waldrip, supra, that a habeas petitioner
may be entitled to gap tolling for the interval between a state habeas petition denied before the
statute of limitations ran and a state habeas petition filed during the limitations period. See
Waldrip, 548 F.3d at 736.

1 The California Supreme Court denied petitioner’s habeas petition without comment or
2 citation. (Respondent’s Lodged Document 8.) However, because this petition was filed beyond
3 the 30 to 60 day time period found reasonable by the Supreme Court in Chavis, the undersigned
4 must determine whether the California Supreme Court would have found this petition timely. As
5 discussed below, petitioner argues that he did not receive notice that the Superior Court denied
6 his state habeas petition until he sent the Superior Court a motion asking for the status of the case
7 in November 2015. (See ECF No. 16 at 15-16.) In February 2016, the Superior Court sent
8 petitioner a letter informing him that his petition had been denied in March 2013. (Id. at 19.)

9 The undersigned observes that in the petition filed in the California Supreme Court,
10 petitioner’s only statement addressing the delay in the filing of the petition is as follows:

11 On 30 January 2013, Petitioner mailed his petition for Writ of
12 Habeas Corpus to the Superior Court for the County of Sacramento.
13 To date, Petitioner has received no response from said court.
14 Additionally, Petitioner has notified the prison mailroom and the
prison trust office trying to procure validation that the litigation was
properly mailed. No response has been forthcoming.

15 (Respondent’s Lodged Document 7 at points and authorities, p. ii.)

16 For the reasons stated herein, petitioner has not shown good cause for his failure to inquire
17 about the status of his Superior Court petition until approximately 33 months after it was filed.

18 In his declaration filed in support of the instant petition, petitioner states that he was
19 “routinely advised by others, namely jailhouse lawyers,” that he should “refrain from ‘bothering’
20 the courts, and that they ‘would not forget’ to adjudicate” his case. (ECF No. 16 at 14.)
21 Petitioner’s explanation that he did not want to “bother” the courts to check on the status of his
22 case, until almost three years after it was filed, does not demonstrate good cause for his delay in
23 filing his petition in the California Supreme Court.²

24 In his opposition, petitioner also suggests that his mental illness prevented him from
25 checking on the status of his Superior Court petition. However, in the section below addressing
26 equitable tolling, the undersigned finds that petitioner has not shown that his mental illness

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28 ² Petitioner’s claim that he did not want to “bother” the courts is discussed in more detail below
in the section addressing equitable tolling.

1 prevented him from filing a timely federal petition and proceeding with his state habeas petitions.
2 For the reasons discussed herein, the undersigned also finds that petitioner has not shown that his
3 mental illness contributed to his delay in seeking information regarding the status of his Superior
4 Court petition.

5 In neither his petition filed in the California Supreme Court nor the instant petition has
6 petitioner demonstrated good cause for the delay between his state court petitions. Accordingly,
7 petitioner is not entitled to gap tolling.

8 Because petitioner is not entitled to statutory tolling, the instant petition is not timely
9 unless petitioner is entitled to equitable tolling.

10 IV. Equitable Tolling

11 A. Legal Standard

12 The one year statute of limitations for filing a habeas petition may be equitably tolled if
13 extraordinary circumstances beyond a prisoner's control prevent the prisoner from filing on time.
14 See Holland v. Florida, 560 U.S. 631, 645 (2010). A petitioner seeking equitable tolling must
15 establish two elements: "(1) that he has been pursuing his rights diligently, and (2) that some
16 extraordinary circumstance stood in his way." Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005).

17 B. Discussion—Alleged Delay in Notice of Denial of Superior Court Petition

18 Petitioner argues that he is entitled to equitable tolling because he did not receive timely
19 notice of the denial of his habeas petition by the Sacramento County Superior Court.

20 As discussed above, petitioner waited approximately 33 months to inquire into the status
21 of his petition filed in the Superior Court. Assuming petitioner did not receive notice of the
22 denial of the petition, as he alleges, the undersigned finds that petitioner did not act diligently in
23 seeking information regarding the status of his Superior Court petition. For the reasons stated
24 herein, the instant case is distinguishable from Huizar v. Carey, 273 F.3d 1220 (9th Cir. 2001),
25 where the Ninth Circuit found that the petitioner acted diligently in seeking information regarding
26 the status of his state petition.

27 In Huizar v. Carey, the petitioner claimed that on April 15, 1996, he gave his petition to
28 prison officials for mailing to the Superior Court. 273 F.3d at 1222. On June 19, 1996, the

1 petitioner wrote the Superior Court about the petition, but received no reply. Id. Twenty-one
2 months later, in March 1998, petitioner wrote the Superior Court again but heard nothing back.
3 Id. Petitioner wrote another letter in August 1998, to which the Superior Court responded that the
4 petition had not been received. Id.

5 In Huizar v. Carey, the Ninth Circuit found that, if the petitioner’s claims were true, he
6 was entitled to equitable tolling for the time he believed his petition was pending in the Superior
7 Court because he acted diligently in seeking information regarding the status of the petition. Id.
8 at 1224. The Ninth Circuit noted that after receiving no response to his first inquiry, he waited an
9 additional twenty-one months, “not an unusually long time to wait for a court’s decision.” Id.
10 The Ninth Circuit noted that the petitioner’s “steady stream of correspondence,” if proven, would
11 show diligence. Id.

12 In Fue v. Biter, 842 F.3d 650 (9th Cir. 2016), in discussing Huizar v. Carey, the Ninth
13 Circuit also observed that the California Rules of Court require the Superior Court to render a
14 decision on a habeas petition within sixty days and provide a process for a petitioner to request a
15 ruling if his petition is not resolved within that time. 842 F.3d at 654. The “Superior Court rule
16 invites petitioners to follow up on their habeas petitions,” which “may explain why the petitioner
17 in Huizar made contact with the court just two months after mailing his petition.” Id.

18 In Fue v. Biter, the Ninth Circuit also cited cases from other circuits which illustrated the
19 case-specific determination of whether a petitioner acted diligently in following up on their state
20 habeas petitions:

21 The Sixth Circuit, noting that “it is a difficult, if not impossible
22 endeavor, [for litigants] to estimate how long a reviewing court will
23 take to decide a particular motion,” held that a pro se petitioner who
24 waited nine months before contacting the court about his case acted
25 with reasonable diligence. Miller v. Collins, 305 F.3d 491, 496 (6th
26 Cir. 2002). The Fifth Circuit held that an eleven-month delay in
27 contacting the court was reasonable “given [the petitioner’s]
28 prisoner and pro se status and the fact that the [court] had the legal
duty to notify him” when it rendered a decision, which it failed to
do. Hardy v. Quarterman, 577 F.3d 596, 599 (5th Cir. 2009) (per
curiam). And the Eleventh Circuit sanctioned a wait of over sixteen
months in contacting the court when a pro se petitioner had been
told that he would be notified of any decision in his case, but he
never received such notice. Knight v. Schofield, 292 F.3d 709,
710–11 (11th Cir. 2002) (per curiam) Fue, also a pro se petitioner

1 entitled to receive notice of the state court's decision, acted
2 diligently by contacting the court after a reasonable amount of time
3 (here, fourteen months) had passed. Compare Diaz v. Kelly, 515
4 F.3d 149, 154–56 (2d Cir. 2008) (finding that a pro se petitioner's
5 nine-month delay in contacting the court was reasonable where the
6 law required the court to notify parties of its decisions, but the
7 petitioner did not receive notice), with LaCava v. Kyler, 398 F.3d
8 271, 276–78 (3d Cir. 2005) (declining to grant equitable tolling
9 after a twenty-one month delay in contacting the court where the
10 petitioner was represented by counsel and not entitled to personal
11 notice of the court's decision), and Cousin v. Lensing, 310 F.3d
12 843, 849 (5th Cir. 2002) (same, twenty-four months).

13 842 F.3d at 654-55.

14 Unlike the petitioner in Huizar, petitioner did not contact the Superior Court after two
15 months or multiple times. Instead, petitioner's first contact with the Superior Court was 33
16 months after he filed the petition. It is clear from the cases cited above that a delay of this
17 magnitude does not demonstrate diligence.

18 In his declaration submitted in support of the petition, petitioner argues that he did not
19 contact the Superior Court sooner based on advice he received from jailhouse lawyers. As
20 discussed above, petitioner states that he was "routinely advised by others, namely jailhouse-
21 lawyers, that I should refrain from 'bothering' the courts, and that they 'would not forget' to
22 adjudicate my case." (ECF No. 16 at 14.) The allegedly bad advice petitioner received from
23 jailhouse lawyers to not bother the Superior Court regarding the status of his habeas is not an
24 extraordinary circumstance that prevented petitioner from filing a timely federal habeas petition.
25 See Gullick v. Bock, 2010 WL 457483 at *17 (D. Az. 2010) (mistakes by jailhouse lawyers
26 generally do not provide basis for equitable tolling) (and cases cited therein). In addition,
27 petitioner's own ignorance of the law and lack of legal expertise are not extraordinary
28 circumstances and do not toll the statute of limitations. Ford v. Pliler, 590 F.3d 782, 789 (9th Cir.
2009); Raspberry v. Garcia, 448 F.3d 1150, 1154 (9th Cir. 2006).

29 The undersigned also observes that petitioner has provided copies of CDCR 22/Inmate
30 Request forms, demonstrating that in November 2015, he began asking prison officials if they had
31 records of his filing of the Superior Court petition. (ECF No. 16 at 17-18.) These November
32 2015 inquiries also do not demonstrate diligence by petitioner in seeking information regarding

1 the status of his Superior Court petition.

2 Accordingly, petitioner is not entitled to equitable tolling on grounds that he did not
3 receive timely notice of the denial of his petition by the Sacramento County Superior Court.

4 B. Discussion—Mental Illness

5 Petitioner argues that he is entitled to equitable tolling based on mental illness.

6 *Legal Standard*

7 The Ninth Circuit has articulated a specific, two-part test for an equitable tolling claim
8 based on a petitioner's mental impairment:

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

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

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

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

17 Bills v. Clark, 628 F.3d 1092, 1099–100 (9th Cir. 2010) (citations omitted) (italics in original);
18 see also Orthel v. Yates, 795 F.3d 935, 938 (9th Cir. 2015) (“A petitioner seeking equitable
19 tolling on the grounds of mental incompetence must show extraordinary circumstances, such as
20 an inability to rationally or factually personally understand the need to timely file, or a mental
21 state rendering an inability personally to prepare a habeas petition and effectuate its filing.”).

22 “The relevant question [is,] ‘[d]id the mental impairment cause an untimely filing?’”

23 Stancle v. Clay, 692 F.3d 948, 959 (9th Cir. 2012) (quoting Bills, 628 F.3d at 1100 n.3.) Bills
24 provides further guidance for applying its two-part test:

25 [T]o evaluate whether a petitioner is entitled to equitable tolling, the
26 district court must: (1) find the petitioner has made a non-frivolous
27 showing that he had a severe mental impairment during the filing
28 period that would entitle him to an evidentiary hearing; (2)
determine, after considering the record, whether the petitioner
satisfied his burden that he was in fact mentally impaired; (3)
determine whether the petitioner’s mental impairment made it

1 impossible to timely file on his own; and (4) consider whether the
2 circumstances demonstrate the petitioner was otherwise diligent in
attempting to comply with the filing requirements.

3 Bills, 628 F.3d at 1100–01. “This reiterates the stringency of the overall equitable tolling test: the
4 mental impairment must be so debilitating that it is the but-for cause of the delay, and even in
5 cases of debilitating impairment the petitioner must still demonstrate diligence.” Yeh v. Martel,
6 751 F.3d 1075, 1078 (9th Cir.), cert. denied sub nom. Yeh v. Biter, 135 S. Ct. 486 (2014), citing
7 Bills, 628 F.3d at 1100.

8 A petitioner alleging a severe mental impairment during the filing period is not entitled to
9 an evidentiary hearing unless he or she makes “a good faith allegation that would, if true, entitle
10 him to equitable tolling.” Laws v. Lamarque, 351 F.3d 919, 921 (9th Cir. 2003) (remanding for
11 consideration of whether the petitioner’s delayed filing was “attributable to psychiatric
12 medication which deprived petitioner of any kind of consciousness” where the petitioner had
13 demonstrated “evidence of serious mental illness” by attaching prison psychiatric and medical
14 records).

15 *Analysis*

16 Petitioner argues that his “mental impairment” caused him to undergo “trials and
17 tribulations above and beyond that of ordinary pro se litigants.” (ECF No. 16 at 9.) Petitioner
18 states that his “prisoner status” prevents him from accessing the “preponderance of his diagnosed
19 mental assessments.” (Id.) Petitioner is apparently claiming that he does not have access to his
20 mental health records.

21 Petitioner goes on to cite four records which he claims demonstrate that his mental illness
22 prevented him from filing a timely federal petition: 1) Mental Health Placement Chrono, dated
23 1/14/16; 2) Mental Health Placement Chrono dated 2/5/13; 3) Mental Health Placement Chrono
24 dated 2/6/14; and 4) “California Correctional Health Care Facility Discharge/Transfer/Continued
25 Care Instructions documenting admittance to mental health care facility beginning January 23,
26 2014 and ending January 30, 2014, wherein prisoner was transferred from CSP-Solano to a
27 mental facility located in Stockton, California.” (Id.)

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1 Petitioner's description of his placement in the mental health care facility is somewhat
2 confusing. However, it appears that he is claiming that he was placed in a mental care health care
3 facility in Stockton for seven days in January 2014. Petitioner does not attach any of the four
4 documents described above to his opposition.

5 Petitioner also cites his declaration attached to the opposition in support of his claim for
6 equitable tolling based on mental illness. In this declaration, the only possible reference to
7 petitioner's alleged mental illness is the statement, "That at the time of my birth, my mother was
8 addicted to crack cocaine." (Id. at 13.)

9 As observed by respondent in the reply to petitioner's opposition, petitioner has not
10 detailed what his mental health diagnosis was during the relevant time period. Petitioner also
11 does not list any medication he was prescribed. In addition, petitioner fails to specifically address
12 how his alleged mental illness impacted his ability to file a timely federal habeas petition.

13 As observed by respondent, petitioner's ability to file his habeas petition in the California
14 Supreme Court approximately one month after his January 14, 2016 Mental Health Chrono
15 undermines petitioner's claim that his mental illness prevented him from filing a habeas petition,
16 at least at that time.

17 Petitioner suggests that his mental health issues prevented him from checking on the status
18 of his Superior Court petition, as evidenced by the mental health chronos he claims he received
19 during the three year gap between the filing of his Superior Court petition and the filing of his
20 petition in the California Supreme Court. Petitioner also claims that he was briefly placed in a
21 mental hospital during 2014. However, in his declaration attached to his opposition, petitioner
22 claims that he did not inquire about the status of his petition filed in the Superior Court based on
23 advice he received from jailhouse lawyers, and not based on his mental illness. Moreover, a
24 fourteen days placement in a mental hospital does not explain why petitioner waited 33 months to
25 check on the status of his petition filed in the Superior Court. The undersigned also observes that,
26 in his California Supreme Court petition, petitioner did not argue that his mental illness caused
27 the delay in his filing of that petition.

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1 Additionally, petitioner waited just over two months to file his federal petition after the
2 California Supreme Court denied his state habeas petition. Petitioner does not explain how his
3 mental illness (or his failure to receive notice of the denial of his Superior Court, for that matter)
4 caused the delay in the filing of his federal petition. Petitioner’s ability to file both his California
5 Supreme Court petition and federal petition in 2016, despite the alleged January 2016 mental
6 health chrono, undermines his claim that his mental illness caused the two month delay in the
7 filing of the federal petition.

8 For the reasons discussed above, the undersigned finds that petitioner has not made a non-
9 frivolous showing that he had a severe mental impairment during the filing period that made it
10 impossible for him to file a timely federal habeas petition. Even without access to his mental
11 health records, petitioner should be able to describe his mental illness and how it impacted his
12 ability to file his state and federal petitions. Accordingly, petitioner is not entitled to equitable
13 tolling based on his alleged mental illness.

14 V. Martinez v. Ryan

15 Citing Martinez v. Ryan, 132 S. Ct. 1309 (2012), petitioner argues that the statute of
16 limitations does not bar his claims based on ineffective assistance of counsel.

17 In Martinez v. Ryan, the Supreme Court held that ineffective assistance of post-conviction
18 counsel may constitute cause for overcoming procedural default. 132 S. Ct. at 1315. Martinez v.
19 Ryan is not relevant to claims barred by the statute of limitations. Accordingly, petitioner’s
20 argument that his claims are not barred pursuant to Martinez v. Ryan is without merit.

21 Accordingly, IT IS HEREBY RECOMMENDED that respondent’s motion to dismiss
22 (ECF No. 11) be granted.

23 These findings and recommendations are submitted to the United States District Judge
24 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
25 after being served with these findings and recommendations, any party may file ritten objections
26 with the court and serve a copy on all parties. Such a document should be captioned “Objections
27 to Magistrate Judge’s Findings and Recommendations.” If petitioner files objections, he shall
28 also address whether a certificate of appealability should issue and, if so, why and as to which

1 issues. A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the applicant has
2 made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(3). Any
3 response to the objections shall be served and filed within fourteen days after service of the
4 objections. The parties are advised that failure to file objections within the specified time may
5 waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.
6 1991).

7 Dated: May 11, 2017

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10 KENDALL J. NEWMAN
11 UNITED STATES MAGISTRATE JUDGE

12 Brox1548.mtd

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