

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARLOW RENOISE STALLING,
Petitioner,
v.
DAVID BAUGHMAN, Warden,
Respondent.

No. 2:16-cv-2083 GEB DB P

FINDINGS AND RECOMMENDATIONS

Petitioner is a state prisoner proceeding pro se and in forma pauperis with a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Petitioner challenges his 1997 conviction for murder. On screening, the court found that the statute of limitations expired long before petitioner filed this action. (See Aug. 8, 2017 Order (ECF No. 14) at 4.) The court informed petitioner of the legal standards for the statute of limitations and equitable tolling and gave petitioner an opportunity to show why he should be entitled to equitable tolling. (Id.) On September 13, 2017, petitioner filed a response and over 300 pages of psychiatric records. After reviewing those records, and for the reasons set forth below, the court finds petitioner fails to show he is entitled to equitable tolling. The court will recommend dismissal of the petition as untimely.

///
///

1 **BACKGROUND**

2 Petitioner challenges his 1997 conviction for first degree murder. He contends his guilty
3 plea was involuntary. (ECF No. 7.) This court’s review of state court records shows that
4 petitioner filed an appeal on March 2, 1998.¹ See People v. Stalling, No. C028822 (Cal. Ct. App.,
5 Third App. Dist.). On April 23, 1998, the Court of Appeal dismissed the case as untimely. See
6 id. (citing former Cal. R. Ct. 31(a) (appeal must be taken within 60 days of judgment)). On June
7 26, 1998, petitioner filed an original habeas corpus petition in the California Supreme Court. See
8 In re Stalling, No. S071493 (Cal. Sup. Ct.). That petition was denied on December 22, 1998.
9 Finally, on March 4, 2004, petitioner filed a habeas corpus petition in the California Court of
10 Appeal. See In re Stalling, No. C046267 (Cal. Ct. App., Third App. Dist.). The Court of Appeal
11 denied that petition on March 25, 2004.

12 **STATUTE OF LIMITATIONS**

13 **I. Legal Standards**

14 The habeas statute’s one-year statute of limitations provides:

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

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

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

22 (C) the date on which the constitutional right asserted was initially
23 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

24 ////

25 ¹ Petitioner’s state appellate court records are available at:
26 <http://appellatecases.courtinfo.ca.gov/search/searchResults.cfm?dist=3&search=party>. His state
supreme court record is available at:
27 [http://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=0&doc_id=1803227](http://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=0&doc_id=1803227&doc_no=S071493)
28 &doc_no=S071493. This court may take judicial notice of public records from other courts. Fed.
R. Evid. 201.

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

4 28 U.S.C. § 2244(d)(1).

5 Under subsection (d)(1)(A), the limitations period runs from the time a petition for
6 certiorari to the United States Supreme Court was due, or, if one was filed, from the final decision
7 by that court. Lawrence v. Florida, 549 U.S. 327, 339 (2007).

8 The limitations period is statutorily tolled during the time in which “a properly filed
9 application for State post-conviction or other collateral review with respect to the pertinent
10 judgment or claim is pending.” 28 U.S.C. § 2244(d)(2). A state petition is “properly filed,” and
11 thus qualifies for statutory tolling, if “its delivery and acceptance are in compliance with the
12 applicable laws and rules governing filings.” Artuz v. Bennett, 531 U.S. 4, 8 (2000). “The period
13 between a California lower court’s denial of review and the filing of an original petition in a
14 higher court is tolled—because it is part of a single round of habeas relief—so long as the filing is
15 timely under California law.” Banjo v. Ayers, 614 F.3d 964, 968 (9th Cir. 2010) (citing Evans v.
16 Chavis, 546 U.S. 189, 191-93 (2006)); see also Carey v. Saffold, 536 U.S. 214, 216-17 (2002)
17 (within California’s state collateral review system, a properly filed petition is considered
18 “pending” under section 2244(d)(2) during its pendency in the reviewing court as well as during
19 the interval between a lower state court’s decision and the filing of a petition in a higher court,
20 provided the latter is filed within a “reasonable time”).

21 The limitations period may be equitably tolled if a petitioner establishes ““(1) that he has
22 been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his
23 way’ and prevented timely filing.” Holland v. Florida, 560 U.S. 631, 649 (2010) (quoting Pace v.
24 DiGuglielmo, 544 U.S. 408, 418 (2005)). An extraordinary circumstance must be more than
25 merely ““oversight, miscalculation or negligence on [the petitioner’s] part.”” Waldron–Ramsey v.
26 Pacholke, 556 F.3d 1008, 1011 (9th Cir. 2009) (quoting Harris v. Carter, 515 F.3d 1051, 1055
27 (9th Cir. 2008)). Rather, petitioner must show that some “external force” “stood in his way.” Id.
28 “The high threshold of extraordinary circumstances is necessary lest the exceptions swallow the

////

1 rule.” Lakey v. Hickman, 633 F.3d 782 (9th Cir. 2011) (citations and internal quotation marks
2 omitted).

3 **II. Analysis**

4 **A. The Petition was Filed Outside the Limitations Period**

5 The court found previously that petitioner’s 2016 federal petition was filed well outside
6 the one-year statute of limitations. Petitioner’s conviction was final in 1997. As described in the
7 court’s August 2017 order, even were petitioner to get the benefit of statutory tolling, which
8 appears unlikely, the latest date for filing a petition in this court would have been March 25,
9 2005, one year after the Court of Appeal’s denial of petitioner’s habeas corpus petition. (ECF
10 No. 14 at 4.)

11 The court also notes that a later trigger date for the statute of limitations is possible under
12 28 U.S.C. § 2244(d)(1)(D). Pursuant to that section, the one-year-limitation period runs from
13 “the date on which the factual predicate of the claim or claims presented could have been
14 discovered through the exercise of due diligence.” Petitioner claims that his guilty plea was
15 involuntary. He is not asserting newly discovered claims and the later trigger date of subsection
16 (d)(1)(D) does not apply.

17 Petitioner’s federal petition can thus only be deemed timely if the limitations period was
18 equitably tolled for the entire period between March 2005, when, giving petitioner every benefit
19 of the doubt, his petition was due, and September 2016, when he filed the present petition.

20 **B. Is Petitioner Entitled to Equitable Tolling?**

21 Petitioner contends he is entitled to equitable tolling because: (1) he was sixteen years old
22 when he was convicted; (2) he did not understand his “case nor the law” for “years;” and (3) he
23 has mental health problems. (ECF No. 15 at 1.)

24 **1. Legal Standards**

25 The Ninth Circuit has made clear that a “pro se petitioner’s lack of legal sophistication is
26 not, by itself, an extraordinary circumstance warranting equitable tolling.” Rasberry v. Garcia,
27 448 F.3d 1150, 1154 (9th Cir. 2006); see also Baker v. Cal. Dep’t of Corr., 484 F. App’x 130, 131
28 (9th Cir. 2012) (“Low literacy levels, lack of legal knowledge, and need for some assistance . . .

1 are not extraordinary circumstances to warrant equitable tolling.”). Because a lack of legal
2 knowledge is a circumstance common to many prisoners, it is neither an “extraordinary
3 circumstance” nor an “external force” which would justify equitable tolling.

4 In addition, low literacy levels are not extraordinary circumstances warranting equitable
5 tolling. See Baker, 484 F. App’x at 131; Payne v. Valenzuela, No. CV 15-3243 FMO (AFM),
6 2015 WL 9914190, at *5 (C.D. Cal. Dec. 4, 2015), rep. and reco. adopted, 2016 WL 304294
7 (C.D. Cal. Jan. 25, 2016); Green v. Small, No. CV 10-0139 DOC(JC), 2011 WL 91045, at *2
8 (C.D. Cal. Jan. 2, 2011) (rejecting petitioner’s claim of entitlement to equitable tolling based on
9 pro se status, lack of legal knowledge or sophistication, and illiteracy), rep. and reco. adopted,
10 2011 WL 91045 (C.D. Cal. Jan. 2, 2011); Stableford v. Martel, No. SA CV 09-1071 JST(RZ),
11 2010 WL 5392763, at *3 (C.D. Cal. Sept. 14, 2010) (rejecting petitioner’s argument that his
12 illiteracy, dyslexia, lack of education, and limited access to “inadequate” prison library were
13 “sufficiently extraordinary to warrant tolling of the limitations period”), rep. and reco. adopted,
14 2010 WL 5416838 (C.D. Cal. Dec. 20, 2010).

15 However, a petitioner’s mental impairment may provide a basis for equitable tolling. The
16 Ninth Circuit has articulated a specific, two-part test for an equitable tolling claim based on a
17 petitioner’s mental impairment:

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

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

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

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

26 Bills v. Clark, 628 F.3d 1092, 1099–1100 (9th Cir. 2010) (citations and footnote omitted; italics
27 in original); see also Orthel v. Yates, 795 F.3d 935, 938 (9th Cir. 2015) (“A petitioner seeking
28 equitable tolling on the grounds of mental incompetence must show extraordinary circumstances,

1 such as an inability to rationally or factually personally understand the need to timely file, or a
2 mental state rendering an inability personally to prepare a habeas petition and effectuate its
3 filing.”).

4 “The relevant question [is,] ‘[d]id the mental impairment cause an untimely filing?’”
5 Stancle v. Clay, 692 F.3d 948, 959 (9th Cir. 2012) (quoting Bills, 628 F.3d at 1100 n. 3.) Bills
6 provides further guidance for applying its two-part test:

7 [T]o evaluate whether a petitioner is entitled to equitable
8 tolling, the district court must: (1) find the petitioner has made a
9 non-frivolous showing that he had a severe mental impairment
10 during the filing period that would entitle him to an evidentiary
11 hearing; (2) determine, after considering the record, whether the
12 petitioner satisfied his burden that he was in fact mentally
impaired; (3) determine whether the petitioner's mental
impairment made it impossible to timely file on his own; and
(4) consider whether the circumstances demonstrate the
petitioner was otherwise diligent in attempting to comply with
the filing requirements.

13 Bills, 628 F.3d at 1100–01. “This reiterates the stringency of the overall equitable tolling test:
14 the mental impairment must be so debilitating that it is the but-for cause of the delay, and even in
15 cases of debilitating impairment the petitioner must still demonstrate diligence.” Yeh v. Martel,
16 751 F.3d 1075, 1078 (9th Cir. 2014) (citing Bills, 628 F.3d at 1100).

17 Thus, the first hurdle under Bills is determining whether petitioner had a “severe mental
18 impairment” that would entitle him to an evidentiary hearing on the equitable tolling issue. This
19 court should order an evidentiary hearing where the “current record ‘does not clearly answer’ the
20 question of whether . . . extraordinary circumstances caused the untimely filing.” Winston v.
21 Myles, No. 2:12-cv-1844-JAD-CWH, 2014 WL 1236546, at *2 (D. Nev. Mar. 25, 2014) (quoting
22 Porter v. Ollison, 620 F.3d 952, 961-62 (9th Cir. 2010)). The district court must take care to
23 ensure that the record regarding the petitioner's mental illness is sufficiently developed to rule on
24 the tolling issue. See Chick v. Chavez, 518 F. App'x 567, 568 (9th Cir. 2013) (remanding “for
25 further development of the record as to [petitioner]'s mental competency and, if necessary, an
26 evidentiary hearing” where record revealed no medical evidence from the time period for which
27 the petitioner sought tolling); Bills, 628 F.3d at 1099–1100 (remanding where the petitioner was
28 in the lowest percentile for verbal IQ, verbal comprehension and working memory, and,

1 according to clinical psychologists, was incapable of inferential thinking necessary to complete a
2 federal habeas form).

3 Nevertheless, “[w]here the record is amply developed, and where it indicates that the
4 petitioner's mental incompetence was not so severe as to cause the untimely filing of his habeas
5 petition, a district court is not obligated to hold evidentiary hearings to further develop the factual
6 record, notwithstanding a petitioner's allegations of mental incompetence.” Roberts v. Marshall,
7 627 F.3d 768, 773 (9th Cir. 2010); see also Orthel, 795 F.3d at 939–40. Courts have held that a
8 district court’s review of a petitioner’s mental health records for the time period in question is
9 sufficient to make that determination. See Roberts, 627 F.3d at 773 (district court’s review of the
10 petitioner’s “extensive medical records” was an amply developed record upon which district court
11 could find an evidentiary hearing unnecessary); Orthel, 795 F.3d at 939 (When the district court
12 ordered the petitioner’s entire medical record to evaluate his mental health, it “demonstrated
13 sensitivity to its obligation to ensure that the record is amply developed, pursuant to *Roberts*, and
14 to make a determination based on the ‘totality of the circumstances,’ as required by *Bills*.”);
15 Taylor v. Filson, 692 F. App’x 821 (9th Cir. June 21, 2017) (district court’s review of the
16 petitioner’s medical records sufficient to conclude equitable tolling not warranted based on the
17 petitioner’s mental health) (citing Orthel, 795 F.3d at 939, and Bills, 628 F.3d at 1100).

18 **2. Discussion**

19 This court has reviewed the petitioner’s mental health records, which total over 300 pages.
20 (See ECF No. 15 at 2-332.) The records provided primarily reflect petitioner’s care between
21 2003 and 2006. Petitioner also provided records for time periods before and after those years, but
22 they are few. As discussed above, in order to qualify for equitable tolling, petitioner must show
23 that he had a severe mental impairment that made it impossible for him to file a petition and that
24 he was otherwise diligent in pursuing his legal rights for the entire time period from 2005 to
25 2016. While petitioner did not provide records for that entire time period, he has provided
26 sufficient records for the years 2005 and 2006 to permit the court to determine that petitioner was
27 not so mentally or cognitively disabled during those years that it was impossible for him to pursue
28 his legal remedies. Those records show the following:

- 1 • Petitioner was diagnosed primarily with schizophrenia, anti-social personality disorder,
2 and depression. (See, e.g., ECF No. 15 at 61.) Petitioner also occasionally reported
3 hallucinations.
- 4 • Petitioner dropped out of school, apparently in the 9th grade. (Id. at 12.) It was noted that
5 petitioner felt he required help in reading. (Id. at 122.)
- 6 • In 2002, petitioner was tested using the “Clark Adaptive Support Evaluation.” He was
7 scored as “DD0,” which indicates he was determined not to have a developmental
8 disability that required adaptive support services.² (Id. at 132-33.)
- 9 • Cognitive testing in late 2004 and in 2005 showed petitioner’s cognition to be “fair” or
10 “WNL,” within normal limits. (Id. at 31-32, 34, 122.)
- 11 • In 2004, petitioner was placed in a mental health crisis bed at least once, apparently due to
12 suicidal ideations. (Id. at 65, 69, 128-31.)
- 13 • Petitioner was placed in the mental health care system at the Correctional Clinical Case
14 Management or “CCCMS” level of care during most or all of 2002, 2003, 2005, and 2006.
15 (Id. at 6, 9, 26, 29, 74, 140.) The one record petitioner provides from 2007 also shows
16 him at the CCCMS level of care. (Id. at 143.) Inmates designated to the CCCMS level of
17 care “are those ‘whose symptoms are under control or in partial remission’” and can
18 function in the general prison population, administrative segregation, or segregated
19 housing unit. Coleman v. Brown, 28 F. Supp. 3d 1068, 1074 (E.D. Cal. 2014). CCCMS
20 is the lowest level of care for mentally ill inmates. See Steward v. Sherman, No. C 15-667
21 WHA(PR), 2016 WL 3345308, at *3 (N.D. Cal. June 16, 2016).
- 22 • In 2004, petitioner spent some time at the Enhanced Outpatient Program or “EOP” level
23 of care. (Id. at 4, 60.) The EOP level of care is for inmates with “acute onset or
24 significant decompensation of a serious mental disorder.” Coleman, 28 F. Supp. 3d at
25 1076. EOP is the next level of care from CCCMS. Steward, 2016 WL 3345308, at *3.

26 _____
27 ² Only prisoners designated as DD1, DD2, or DD3 are considered developmentally disabled and
28 qualify for adaptive support. See Clark v. California, 739 F. Supp. 2d 1168, 1188 (N.D. Cal.
2010).

- 1 Petitioner was also at the CCCMS level of care during parts of 2004. (Id. at 27, 69.)
- 2 • Petitioner was assigned a “GAF” score at many mental health visits. “Global Assessment
- 3 of Functioning,” or “GAF,” is a scale that was used by clinicians to assess an individual’s
- 4 overall level of functioning, including the “psychological, social, and occupational
- 5 functioning on a hypothetical continuum of mental health-illness.³”
- 6 • During 2005 and 2006, petitioner’s GAF score was between 60 and 65. (Id. at 13, 16, 22,
- 7 140, 142.) The few records from 2007 also show a GAF score in the low 60’s. (Id. at
- 8 143, 147.) A GAF score of 61–70 indicates some mild symptoms (e.g., depressed mood
- 9 and mild insomnia) or some difficulty in social, occupational, or school function (e.g,
- 10 occasional truancy, or theft within the household), but generally functioning pretty well,
- 11 has some meaningful interpersonal relationships. A GAF of 51–60 indicates moderate
- 12 symptoms (e.g., flat affect and circumstantial speech, occasional panic attacks) or
- 13 moderate difficulty in social, occupational, or school function (e.g., few friends, conflicts
- 14 with peers or co-workers).
- 15 • In 2004 during the time petitioner was under suicide watch, his GAF score dropped to a
- 16 low of 20 on June 26, indicating he was severely impaired, and was 40 on July 6,
- 17 indicating he had some impairment in reality testing or communication. (Id. at 65, 69.)
- 18 However, by December 2004, petitioner’s GAF score was determined to be 55. (Id. at
- 19 70.)

20 The records provided do not reflect that petitioner was diagnosed with a developmental

21 disability or that he lacked the cognitive ability to understand the need to pursue his legal rights.

22 During the relevant time period, 2005 and 2006, petitioner was never assigned a GAF score lower

23 than 60. While GAF scores are not dispositive, petitioner’s consistently moderate GAF scores are

24 not consistent with a finding that he was so impaired by his mental illnesses that he could not

25 ////

26 ////

27 ³ All descriptions of GAF scores come from the Am. Psychiatric Ass'n, Diagnostic and Statistical

28 Manual of Mental Disorders with Text Revisions 32 (4th ed. 2004) (“DSM IV–TR”).

1 understand the need to seek habeas relief and to take steps to seek such relief.⁴ See Lawrence v.
2 Lizzaraga, No. 2:16-cv-0792 GEB AC P, 2017 WL 495774, at *4 (E.D. Cal. Feb. 7, 2017) (GAF
3 score of 68 means petitioner’s “mental faculties were within normal limits” and does not support
4 equitable tolling); Davis v. Malfi, No. CV 06-4744-JVS (JEM), 2015 WL 1383776, at *3 (C.D.
5 Cal. Mar. 20, 2015) (GAF scores between 60 and 70, with two scores of 53 and 55, among the
6 court’s reasons for finding no basis for equitable tolling based on mental incompetence); Sigmon
7 v. Kernan, No. CV 06-5807 AHM (JWJ), 2009 WL 1514700, at *9 (C.D. Cal. May 27, 2009)
8 (GAF scores between 55 and 66 “indicate only mild to moderate impairment” and do not provide
9 a basis for equitable tolling); Lawless v. Evans, 545 F. Supp. 2d 1044, 1049 (C.D. Cal. 2008)
10 (GAF score of 65 does not justify claim for equitable tolling due to mental incompetence)

11 Further, petitioner’s treatment at the CCCMS level of care “suggests that petitioner was
12 able to function despite his mental health problems.” Washington v. McDonald, No. CV 09-
13 2632-JVS (AJW), 2010 WL 1999469, at *2 (C.D. Cal. Feb. 19, 2010) (citing Coleman, 922 F.
14 Supp. 2d at 903 n. 24), rep. and reco. adopted, 2010 WL 1999465 (C.D. Cal. Feb. 24, 2010).
15 CCCMS is the least restrictive level of mental health care and meant that petitioner was
16 consistently housed in the general population.

17 Finally, the court notes that petitioner did, in fact, pursue his legal rights shortly after trial.
18 He filed an appeal in 1998 and a habeas petition in the state courts in 1998. Several years later,
19 petitioner filed a second state habeas petition in 2004. This history shows that petitioner has been

20 ///

21
22 ⁴ The court recognizes that the American Psychiatric Association discontinued use of the GAF
23 scale. See Am. Psychiatric Ass’n, Diagnostic and Statistical Manual of Mental Disorders, 16 (5th
24 ed. 2013) (GAF scale dropped due to its “conceptual lack of clarity” and “questionable
25 psychometrics in routine practice”). However, the Ninth Circuit has continued to look to the
26 GAF score as “a rough estimate of an individual’s psychological, social, and occupational
27 functioning used to reflect the individual’s need for treatment.” Garrison v. Colvin, 759 F.3d 995,
28 1003 n. 4 (9th Cir. 2014) (finding in the context of a social security disability appeal that GAF
scores are relevant to the disability assessment); see also Dowdy v. Curry, 617 F. App’x 772 (9th
Cir. 2015) (GAF score indicating “only moderate symptoms of impairment” did not support
equitable tolling). In addition, as shown by the citations in the text, other district courts in this
circuit continue to consider GAF scores when determining whether a petitioner’s mental state
justifies equitable tolling.

1 aware of the need to pursue legal claims relating to his conviction long before he filed the present
2 action.

3 This is not a case like that considered by the Ninth Circuit in Forbess v. Franke, 749 F.3d
4 837 (9th Cir. 2014). In that case, the prisoner had persistent delusions that he was working for the
5 FBI. His delusions were documented by various doctors and they were elaborate. He explained
6 that his delusions caused him to believe he had no need to file a federal habeas petition because
7 his work for the FBI would result in his release. 749 F.3d at 839. Petitioner in the present case
8 had neither consistent delusions nor delusions that appeared to affect his thinking about his legal
9 status.

10 In cases like the present one, where a petitioner had mental health problems but had
11 cognitive abilities within normal ranges, the Ninth Circuit has held equitable tolling is not
12 warranted. In Roberts v. Marshall, 627 F.3d 768, 770 (9th Cir. 2010), the court declined
13 equitable tolling because the petitioner's mental health records showed that he was medicated for
14 severe psychotic depression disorder, but he had normal mental functions, his appearance,
15 behavior, mood, speech, appetite, sleep and affect were within normal limits, he was not
16 delusional, and had normal insight and judgment. In Orthel v. Yates, 795 F.3d 935, 941 (9th Cir.
17 2015), the Ninth Circuit affirmed the dismissal of a petition where substantial evidence showed
18 that, despite fluctuations in mental health, the petitioner possessed sufficient competence and
19 capability in the year following the date on which the state court judgment became final as well as
20 sufficient competence during much of the eleven-year span between finality of judgment and
21 filing of his federal petition.

22 The records provided do not reflect that petitioner had a mental impairment so severe that
23 he was unable to rationally or factually understand the need to timely file a petition or that he was
24 rendered unable to file a petition. Rather, the records show that petitioner's functional
25 impairment was moderate, at most, and his cognition was intact throughout 2005 and 2006.
26 Based on the court's review of petitioner's mental health records, and based on this district
27 court's limited resources and time, this court does not find an evidentiary hearing is required to
28 make a determination of petitioner's mental competence. The existing record is sufficient to

1 conclude that petitioner had the mental capacity to understand the need to timely file a petition
2 and to effectuate its filing in 2005 and 2006.

3 Finally, even if petitioner satisfied the first prong of the Bills test (which he has not),
4 equitable tolling would not be warranted because petitioner has not shown that he was diligent in
5 pursuing his claims “to the extent that he could understand them, but that [his] mental impairment
6 made it impossible to meet the filing deadline under the totality of the circumstances, including
7 reasonably available access to assistance.” Bills, 628 F.3d at 1100. Petitioner has not alleged any
8 specific facts showing that he attempted, between 2005 and 2016, to obtain assistance in order to
9 file a timely petition or that his mental impairment prevented him from locating assistance or
10 from understanding any assistance that he had obtained. Id. at 1100-01; see also Lott v. Mueller,
11 304 F.3d 918, 923 (9th Cir. 2002) (equitable tolling determinations “turn[] on an examination of
12 detailed facts”). Petitioner’s simple statement that it took him years to understand his legal rights
13 is not sufficiently specific to demonstrate diligence.

14 CONCLUSION


15 This court finds petitioner is not entitled to equitable tolling based on his ignorance of the
16 law, cognitive abilities, or mental health. Therefore, the petition is untimely under 28 U.S.C. §
17 2244(d)(1) and IT IS HEREBY RECOMMENDED that the petition be dismissed.

18 These findings and recommendations will be submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
20 after being served with these findings and recommendations, any party may file written
21 objections with the court and serve a copy on all parties. The document should be captioned
22 “Objections to Magistrate Judge's Findings and Recommendations.” Any response to the
23 objections shall be filed and served within seven days after service of the objections. The parties
24 are advised that failure to file objections within the specified time may result in waiver of the
25 right to appeal the district court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991). In the
26 objections, the party may address whether a certificate of appealability should issue in the event
27 an appeal of the judgment in this case is filed. See Rule 11, Rules Governing § 2254 Cases (the

28 ///

1 district court must issue or deny a certificate of appealability when it enters a final order adverse
2 to the applicant).

3 Dated: February 9, 2018

4
5 
6 DEBORAH BARNES
7 UNITED STATES MAGISTRATE JUDGE
8
9
10
11
12
13
14
15

16 DLB:9
17 DLB1/prisoner-habeas/stal2083.eq toll
18
19
20
21
22
23
24
25
26
27
28