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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD ANTONIO HUNDLEY,  
  
                                    Petitioner,  
  
                    v.  
  
T. CISNEROS,  
  
                                    Respondent.

Case No. 2:21-cv-02237-JDP (HC)

ORDER GRANTING PETITIONER’S  
APPLICATION TO PROCEED IN FORMA  
PAUPERIS AND DIRECTING THAT THE  
CLERK OF COURT ASSIGN A DISTRICT  
JUDGE TO RULE ON THESE FINDINGS  
AND RECOMMENDATIONS

ECF No. 2

FINDINGS AND RECOMMENDATIONS  
THAT THIS ACTION BE DISMISSED FOR  
FAILURE TO STATE A COGNIZABLE  
FEDERAL HABEAS CLAIM

ECF No. 1

Petitioner, a state prisoner proceeding without counsel, seeks a writ of habeas corpus under 28 U.S.C. § 2254. He was convicted in September 2009 and sentenced to life without parole. ECF No. 1 at 1. His petition is untimely. Accordingly, I recommend that it be dismissed.

The amended petition is before me for preliminary review under Rule 4 of the Rules Governing Section 2254 Cases. Under Rule 4, the judge assigned to the habeas proceeding must examine the habeas petition and order a response to the petition unless it “plainly appears” that the petitioner is not entitled to relief. *See Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019); *Boyd v. Thompson*, 147 F.3d 1124, 1127 (9th Cir. 1998).

Petitioner requests that I review the state court’s interpretation and imposition of Penal Code § 190.2(a)(17) in his case. ECF No. 1 at 18. Under that provision of California law, death

1 or life without parole is the appropriate penalty for a person convicted of murder in the first  
2 degree while engaged in other felonious activity including, but not limited to, robbery, rape, or  
3 kidnapping. *See* Cal. Penal Code § 190.2(a)(17). More specifically, petitioner seeks review of  
4 the state court’s “*Banks/Clark*” review of his case.<sup>1</sup> ECF No. 1 at 68. As the state superior court  
5 explained in the only reasoned habeas decision, a *Banks/Clark* review examines “whether there  
6 was sufficient evidence in the record to support the true finding of the robbery-murder special  
7 circumstance . . . .” *Id.*

8 As stated above, petitioner was convicted in 2009. *Id.* at 1. Thus, the Anti-Terrorism and  
9 Effective Death Penalty Act’s (“AEDPA”) one-year statute of limitations for seeking federal  
10 habeas review has long since expired. *See* 28 U.S.C. § 2244(d)(1). And the Ninth Circuit has  
11 held that AEDPA’s limitations period is not excepted for modifications or clarifications of state  
12 law. *See Shannon v. Newland*, 410 F.3d 1083, 1088 (9th Cir. 2005). In light of that holding,  
13 courts in this circuit have declined to consider *Banks/Clark* claims that fall outside the statute of  
14 limitations. *See, e.g., Acosta v. Lynch*, No. 3:20-cv-02039-WQH-AHG, 2021 U.S. Dist. LEXIS  
15 127513, \*7 (S.D. Cal. 2021) (“[S]ince *Banks* and *Clark* were both decided by the California  
16 Supreme Court, Petitioner is not entitled to a later start date of the statute of limitations.”).  
17 Petitioner argues that, under his own understanding of the law, the habeas petitions relevant to his  
18 claims were timely filed. ECF No. 1 at 51-53. But AEDPA’s statute of limitations makes no  
19 exception for a petitioner’s unfamiliarity with the law. *See Raspberry v. Garcia*, 448 F.3d 1150,  
20 1154 (9th Cir. 2006) (“[A] pro se petitioner’s lack of legal sophistication is not, by itself, an  
21 extraordinary circumstance warranting equitable tolling.”).

22 It is ORDERED that:

- 23 1. Petitioner’s application to proceed *in forma pauperis*, ECF No. 2, is granted.
- 24 2. The Clerk of Court shall assign a district judge to rule on these findings and  
25 recommendations.

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28 <sup>1</sup> Referring the California Supreme Court’s decisions in *People v. Banks*, 61 Cal. 4th 788 (2015) and *People v. Clark*, 63 Cal. 4th 522 (2016).

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It is RECOMMENDED that petitioner’s petition, ECF No. 1, be dismissed without leave to amend as untimely.

These findings and recommendations are submitted to the U.S. District Court Judge presiding over this case under 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court, Eastern District of California. Within fourteen days of service of the findings and recommendations, petitioner may file written objections to the findings and recommendations with the court. That document must be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The District Judge will then review the findings and recommendations under 28 U.S.C. § 636(b)(1)(C).

IT IS SO ORDERED.

Dated: December 13, 2021

  
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JEREMY D. PETERSON  
UNITED STATES MAGISTRATE JUDGE