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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

11 ANDREW E. SANFORD, No. 2:22-cv-1304 AC P
12 Petitioner,
13 v. ORDER AND FINDINGS
RECOMMENDATION
14 BIRD,
15 Respondent.

ORDER AND FINDINGS & RECOMMENDATIONS

17 Petitioner, a state prisoner proceeding pro se, filed a petition for a writ of habeas corpus
18 pursuant to 28 U.S.C. § 2254. By order filed October 20, 2022, petitioner was ordered to show
19 cause why the petition should not be dismissed as untimely. ECF No. 6. Petitioner has now filed
20 a response. ECF No. 7.

21 As outlined in the October 20, 2022 order, the statute of limitations to file a federal habeas
22 petition expired on May 11, 2022. ECF No. 6 at 3. As a result, the instant petition, filed on July
23 20, 2022, is untimely unless petitioner can show he is entitled to tolling. In his response to the
24 order to show cause, petitioner asserts that he is entitled to equitable tolling based on two separate
25 sets of circumstances. ECF No. 7.

26 A habeas petitioner is entitled to equitable tolling of AEDPA's one-year statute of
27 limitations "only if he shows '(1) that he has been pursuing his rights diligently, and (2) that some
28 extraordinary circumstance stood in his way' and prevented timely filing." *Holland v. Florida*,

1 560 U.S. 631, 649 (2010) (quoting Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005)). “[T]he
2 statute-of-limitations clock stops running when extraordinary circumstances first arise, but the
3 clock resumes running once the extraordinary circumstances have ended or when the petitioner
4 ceases to exercise reasonable diligence, whichever occurs earlier.” Luna v. Kernan, 784 F.3d
5 640, 651 (9th Cir. 2015) (citing Gibbs v. Legrand, 767 F.3d 879, 891-92 (9th Cir. 2014)). An
6 “extraordinary circumstance” has been defined as an external force that is beyond the inmate’s
7 control. Miles v. Prunty, 187 F.3d 1104, 1107 (9th Cir. 1999) (citations omitted). “The diligence
8 required for equitable tolling purposes is ‘reasonable diligence,’ not ‘maximum feasible
9 diligence.’” Holland, 560 U.S. at 653 (internal citations and some quotation marks omitted).

10 Petitioner first claims entitlement to equitable tolling on the ground that he was deprived
11 of his trial transcripts from March 10, 2021 until June 23, 2021. ECF No. 7 at 2. However, even
12 if the court assumes that the statute of limitations was tolled until petitioner received his
13 transcripts, the deadline would be extended only until June 23, 2022, and the petition is still
14 nearly one month late.

15 Petitioner also states that he is entitled to equitable tolling because he has been unable to
16 reach his trial attorney—who has been suspended from practice—in order to obtain “much
17 needed attorney trial files.” Id. at 3. The Ninth Circuit has held that in some circumstances,
18 equitable tolling may be appropriate where a pro se petitioner is entirely deprived of access to
19 case materials. See Ramirez v. Yates, 571 F.3d 993, 998 (9th Cir. 2009) (“complete lack of
20 access to a legal file may constitute an extraordinary circumstance”); Lott v. Muller, 304 F.3d
21 918, 924 (lack of access to files during temporary transfers); United States v. Battles, 362 F.3d
22 1195, 1196-97 (9th Cir. 2004) (transcripts withheld by former counsel). However, petitioner has
23 failed to demonstrate that this is such a situation. Petitioner’s general claim that he has been
24 deprived of necessary files does not make a particularized showing that the portions of the record
25 he lacked were so crucial that nothing else could be done until they were received. See Waldron-
26 Ramsey v. Pacholke, 556 F.3d 1008, 1013 (9th Cir. 2009) (“Deprivation of legal materials is the
27 type of external impediment for which we have granted equitable tolling. But [petitioner] bears
28 the burden of showing his own diligence and that the hardship caused by lack of access to his

1 materials was an extraordinary circumstance that caused him to file his petition . . . late.” (internal
2 citations omitted).

3 Petitioner has failed to demonstrate that he is entitled to a period of equitable tolling
4 sufficient to make the petition timely, and he has not identified any other grounds for tolling the
5 statute of limitations. For these reasons, and those set forth in the October 20, 2022 order to show
6 cause (ECF No. 6), which is incorporated herein by reference, the petition is untimely and should
7 be dismissed.

8 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court shall randomly
9 assign a United States District Judge to this action.

10 IT IS FURTHER RECOMMENDED that petitioner’s application for a writ of habeas
11 corpus be dismissed without prejudice.

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

20 If petitioner files objections, he may also address whether a certificate of appealability
21 should issue and, if so, why and as to which issues. Pursuant to Rule 11 of the Federal Rules
22 Governing Section 2254 Cases, this court must issue or deny a certificate of appealability when it
23 enters a final order adverse to the applicant. A certificate of appealability may issue only “if the
24 applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C.
25 § 2253(c)(2).

26 DATED: November 21, 2022


ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE