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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ADRIANA BEDOLLA,
Petitioner,

No. C 08-172 SI (pr)

ORDER

v.

TINA HORNBEAK, warden,
Respondent.

INTRODUCTION

Adriana Bedolla, a prisoner incarcerated at the Valley State Prison for Women, has filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Her petition is now before the court for review pursuant to 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases.

BACKGROUND

Bedolla's petition states that she was convicted in 2001 in San Benito County Superior Court of assault on a child under the age of eight and was sentenced to 25 years to life in prison in 2001. She appealed. Although her petition states that her appeals were denied in 2007, the docket sheets available on the California courts' web site indicate otherwise. Those docket sheets indicate that her petition for review was filed and denied in 2003 in the California Supreme Court and her petition for writ of habeas corpus was filed and denied in 2007 in the California Supreme Court. (See <http://appellatecases.courtinfo.ca.gov.search>, visited on February 1, 2008.)

1 Bedolla then filed this action. Her federal petition has a proof of service dated December
2 20, 2007, and was stamped "filed" at the court on January 11, 2008. Her in forma pauperis
3 application is outdated, as the inmate trust account statement is from 2003-2004 and the
4 certificate of funds is dated in April 16, 2004.

6 DISCUSSION

7 This court may entertain a petition for writ of habeas corpus "in behalf of a person in
8 custody pursuant to the judgment of a State court only on the ground that he is in custody in
9 violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). A
10 district court shall "award the writ or issue an order directing the respondent to show cause why
11 the writ should not be granted, unless it appears from the application that the applicant or person
12 detained is not entitled thereto." 28 U.S.C. § 2243. Under Rule 4 of the Rules Governing
13 Habeas Corpus Cases Under Section 2254, a district court may also order the respondent to file
14 another pleading where neither summary dismissal nor service is appropriate.

15 The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), which became
16 law on April 24, 1996, imposed for the first time a statute of limitations on petitions for a writ
17 of habeas corpus filed by state prisoners. Petitions filed by prisoners challenging non-capital
18 state convictions or sentences must be filed within one year of the latest of the date on which:
19 (1) the judgment became final after the conclusion of direct review or the time passed for
20 seeking direct review; (2) an impediment to filing an application created by unconstitutional
21 state action was removed, if such action prevented petitioner from filing; (3) the constitutional
22 right asserted was recognized by the Supreme Court, if the right was newly recognized by the
23 Supreme Court and made retroactive to cases on collateral review; or (4) the factual predicate
24 of the claim could have been discovered through the exercise of due diligence. See 28 U.S.C.
25 § 2244(d)(1). Time during which a properly filed application for state post-conviction or other
26 collateral review is pending is excluded from the one-year time limit. See id. § 2244(d)(2).

27 It appears that the petition may be untimely under the AEDPA's one-year limitation
28

1 period. This apparent procedural problem should be addressed before the court reaches the
2 merits of the claims raised in the petition. If the petition is time-barred, the litigants and court
3 need not expend resources addressing the claims in the petition. Accordingly, pursuant to Rule
4 4 of the Rules Governing Habeas Corpus Cases Under Section 2254, respondent must either (1)
5 move to dismiss the petition on the ground that it is untimely, or (2) inform the court that
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7 **CONCLUSION**

8 Good cause appearing therefor,

9 1. The clerk shall serve by certified mail a copy of this order, the petition, and all
10 attachments thereto upon respondent and respondent's attorney, the Attorney General of the State
11 of California. The clerk also shall send a copy of this order to petitioner.

12 2. Respondent must file and serve, no later than **April 4, 2008**, a motion to dismiss
13 the petition or a notice that respondent is of the opinion that a motion to dismiss is unwarranted.

14 3. If petitioner wishes to oppose the motion to dismiss, she must do so by filing an
15 opposition with the court and serving a copy upon respondent no later than **May 9, 2008**.


16 4. Respondent must file and serve her reply, if any, no later than **May 30, 2008**.

17 5. The motion will be deemed submitted as of the date the reply brief is due. No
18 hearing will be held on the motion. If respondent notifies the court that a motion to dismiss is
19 unwarranted or the motion to dismiss is decided against respondent, the court will then
20 determine whether to require an answer to the petition.

21 6. Petitioner's in forma pauperis application is DENIED because it does not have a
22 certificate of funds and inmate trust account statement for the last six months before this action
23 was filed. (Docket # 3.) She must pay the \$5.00 filing fee no later than **March 14 2008**.
24 Failure to pay the fee by the deadline will result in the dismissal of this action.

25 IT IS SO ORDERED.

26 DATED: February 4, 2008

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28 _____
SUSAN ILLSTON
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ADRIANA A. BEDOLLA,
Plaintiff,

Case Number: CV08-00172 SI

CERTIFICATE OF SERVICE

v.

TINA HORNBEAK et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on February 5, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Adriana Arzola Bodolla W-92502
Valley State Prison for Women
B3.31-4up
P.O. Box 96
Chowchilla, CA 93610-0096

Dated: February 5, 2008

Richard W. Wieking, Clerk
By: Tracy Sutton, Deputy Clerk

