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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DENNIS L. HAMILTON,
Petitioner,
v.
F. GONZALEZ, warden,
Respondent.

No. C 09-1494 SI (pr)
ORDER ON INITIAL REVIEW

INTRODUCTION

Dennis L. Hamilton, an inmate at the California Correctional Institution in Tehachapi, filed this pro se action for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. His 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

Hamilton's petition provides the following information: Following a plea of nolo contendere, Hamilton was convicted in San Mateo County Superior Court of kidnapping to commit robbery and assault with a deadly weapon. He was sentenced to life imprisonment plus one year in 1997. He does not indicate whether he appealed the conviction. He did, however, file state habeas petitions in 2007-2008 before filing this action.

Hamilton then filed this action. The signature on the federal petition is dated March 26, 2009. (The proof of service attached to the petition has the same date, but that is irrelevant because the proof of service shows the document being mailed to three addressees other than this

United States District Court
For the Northern District of California

1 court.) The petition was stamped "filed" on April 6, 2009 at this court.
2

3 DISCUSSION

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

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

24 It appears that the petition may be untimely under the AEDPA's one-year limitation
25 period. This apparent procedural problem should be addressed before the court reaches the
26 merits of the claims raised in the petition. If the petition is time-barred, the litigants and court
27 need not expend resources addressing the claims in the petition. Accordingly, pursuant to Rule
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1 4 of the Rules Governing Habeas Corpus Cases Under Section 2254, respondent must either (1)
2 move to dismiss the petition on the ground that it is untimely, or (2) inform the court that
3 respondent is of the opinion that such a motion to dismiss is unwarranted in this case.

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5 **CONCLUSION**

6 Good cause appearing therefor,

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

10 2. Respondent must file and serve, no later than **September 4, 2009**, a motion to
11 dismiss the petition or a notice that he is of the opinion that a motion to dismiss is unwarranted.


12 3. If petitioner wishes to oppose the motion to dismiss, he must do so by filing an
13 opposition with the court and serving a copy upon respondent no later than **October 9, 2009**.

14 4. Respondent must file and serve his reply, if any, no later than **October 23, 2009**.

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

19 IT IS SO ORDERED.

20 DATED: June 11, 2009

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23 SUSAN ILLSTON
24 United States District Judge
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