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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

QUINN MALCOLM WILRIDGE,

Petitioner,

No. C 09-2236 SI

v.

**ORDER DENYING RESPONDENT’S
MOTION TO DISMISS**

JOHN MARSHALL, Warden,

Respondent.

Presently before the Court is a motion by respondent John Marshall to dismiss the petition for failure to exhaust state remedies. Docket No. 41. For the reasons set forth below, the Court DENIES respondent’s motion to dismiss.¹

BACKGROUND

I. State Court Proceedings

On October 16, 2001, following a jury trial, petitioner Quinn Malcolm Wilridge was convicted of robbery and was found to have suffered six prior robbery convictions in Washington state. Docket No. 7, Ex. A at 239-41, 298, Ex. B at 363-65, 422-44. He was sentenced on February 1, 2002 to 30 years to life in state prison. *Id.* Ex. A at 297-99, Ex. B at 513-14.

He appealed. His conviction was affirmed by the California Court of Appeal on December 8, 2003. Docket No. 8, Ex. C. The California Supreme Court denied his petition for review on March 3,

¹ On March 20, 2014, respondent filed a motion for leave to file a response to petitioner’s sur-reply. Docket No. 49. For good cause shown, the Court GRANTS the motion and will consider the response attached to the motion for leave.

1 2004. Docket No. 9, Ex. E.

2 About four years later, petitioner sought collateral review of his conviction. On April 13, 2008,
3 petitioner filed a petition for writ of habeas corpus in the Santa Clara County Superior Court, which was
4 denied on June 30, 2008. Docket No. 9, Exs. F, G. On August 25, 2008, petitioner filed a petition for
5 writ of habeas corpus in the California Court of Appeal, which was denied on August 29, 2008. *Id.* Exs.
6 H, I.

7 Petitioner received notice of the Court of Appeal’s denial on September 3, 2008. Docket No.
8 44-1, Phillips Decl. Ex. C. The California Supreme Court received Wilridge’s petition for review of the
9 Court of Appeal’s denial on September 11, 2008. *Id.* Ex. A. In a letter dated September 12, 2008, the
10 deputy clerk of the California Supreme Court explained to petitioner that his petition for review should
11 have been filed by September 8, 2008 and, therefore, was untimely. *Id.* Ex. B. The letter instructed
12 petitioner that for his petition for review to be filed, he must file an “Application for Relief from
13 Default” by September 29, 2008. *Id.* Petitioner did not receive the September 12, 2008 letter until
14 October 8, 2008, after the deadline set forth in the letter had already passed. *Id.* Exs. D, E.
15 Nevertheless, petitioner submitted an Application for Relief from Default, which was received by the
16 California Supreme Court on October 17, 2008. *Id.* Exs. A, F. In a letter dated October 17, 2008, the
17 deputy clerk of the California Supreme Court stated:

18 Returned unfiled is your petition for review received 9-11-2008. In a letter dated 9-12-
19 2008 you were advised that your petition for review was untimely and you were required
20 to submit an Application for Relief from Default explaining the reasons for your failure
21 to file a timely petition for review. You did not submit an Application for Relief from
22 Default by the date requested and the court lost jurisdiction to consider or grant relief of
23 any nature in this case.

24 *Id.* Ex. A.

1 **II. Federal Court Proceedings**

2 Around April 15, 2009, petitioner, proceeding pro se, filed the present petition for writ of habeas
3 corpus pursuant to 28 U.S.C. § 2254, raising four claims.² Docket No. 1. On August 20, 2009,
4 respondent filed a motion to dismiss the petition on the ground that it was barred by the one-year statute
5 of limitations set forth in 28 U.S.C. § 2244(d)(1). Docket No. 7. On October 25, 2009, the Court
6 granted respondent’s motion to dismiss and entered judgment in the action. Docket Nos. 11, 12.

7 On November 9, 2009, petitioner filed a notice of appeal. Docket No. 14. On July 18, 2011, the
8 Ninth Circuit granted petitioner’s request for a certificate of appealability, “with respect to the following
9 issues: whether the district court erred by dismissing appellant’s habeas petition as time-barred,
10 including whether, in light of this court’s holdings in *Bills v. Clark*, 628 F.3d 1092, 1099-1101 (9th Cir.
11 2010) and *Roberts v. Marshall*, 627 F.3d 768, 773 (9th Cir. 2010), appellant was entitled to an
12 evidentiary hearing and/or equitable tolling on the basis of his mental impairment.” Docket No. 18.
13 The Ninth Circuit also appointed counsel for petitioner. *Id.*

14 On February 10, 2012, petitioner filed a motion before the Ninth Circuit for limited remand to
15 this Court to supplement the record with newly obtained medical records and his prison “C file.”
16 *Wilridge v. Marshall*, Case No. 09-17695, Docket No. 18 (9th Cir. Feb. 10, 2012). In his motion,
17 petitioner argued that the documents he recently obtained with the assistance of his newly appointed
18 attorney would demonstrate that his mental impairment was sufficiently severe to cause the untimely
19 filing of his habeas petition. *Id.* On April 9, 2012, the Ninth Circuit denied Wilridge’s motion for
20 limited remand. *Id.*, Docket No. 26 (9th Cir. Apr. 9, 2012). However, the Ninth Circuit stated that the
21 denial was “without prejudice to a renewed motion accompanied by an indication that the district court
22 is willing to entertain the proposed Federal Rule of Civil Procedure 60(b) motion.” *Id.* (citing *Crateo*
23 *v. Intermark, Inc.*, 536 F.2d 862 (9th Cir. 1976)).

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25 ² The four claims are as follows: (1) the trial court violated petitioner’s due process rights by
26 accepting an invalid out-of-state plea agreement for Three Strikes purposes; (2) petitioner received
27 ineffective assistance of trial counsel in violation of the Sixth Amendment; (3) the trial court was biased
28 against petitioner in violation of his due process rights; and (4) petitioner received ineffective assistance
of appellate counsel in violation of the Sixth Amendment. Docket No. 1 at 6-6A.

1 **B. Analysis**

2 As respondent acknowledges in his motion, all four claims in the present petition were contained
3 in the state habeas petition that petitioner filed with the California Court of Appeal on August 25, 2008.
4 *Compare* Docket No. 1 at 6-6A *with* Docket No. 9 Ex. H; *see also* Resp't Mot. at 3. This by itself is
5 insufficient to satisfy the exhaustion requirement. *See, e.g., Wooten v. Kirkland*, 540 F.3d 1019, 1025
6 (9th Cir. 2008); *James v. Giles*, 221 F.3d 1074, 1077 n.3 (9th Cir. 2000). However, after the Court of
7 Appeal denied the petition, respondent sent to the California Supreme Court a petition for review and
8 an application for relief from default. Although both his petition for review and application for relief
9 from default were returned to petitioner as unfiled, the Court concludes that in the unique circumstances
10 of the present case this was sufficient to satisfy the exhaustion requirement.

11 The letter from the California Supreme Court returning the petition for review unfiled stated:
12 “You did not submit an Application for Relief from Default by the date requested and the court lost
13 jurisdiction to consider or grant relief of any nature in this case.” Docket No. 44-1, Phillips Decl. Ex.
14 A. At least one district court has found that receipt of a letter with similar language from the California
15 Supreme Court is sufficient to satisfy the exhaustion requirement. *See Perez v. Mendoza-Powers*,
16 05-cv-0720-AWI-TAG, 2008 U.S. Dist. LEXIS 56790, at *6-7 (E.D. Cal. Jul. 23, 2008), *adopted by*
17 2008 U.S. Dist. LEXIS 84091 (E.D. Cal. Sept. 10, 2008). The Court concludes that the language in
18 petitioner's letter is sufficient to satisfy the exhaustion requirement because it informed petitioner that
19 the California Supreme Court lacked jurisdiction to consider or grant relief of any nature in his case and
20 did not offer petitioner any remaining options for relief. Respondent argues that the letter was
21 insufficient to exhaust his state court remedies because petitioner could have filed and can still file an
22 original habeas petition with the California Supreme Court, citing *People v. Gray*, 179 Cal. App. 4th
23 1189 (2009). Resp't Reply at 2-6. The Court finds *Gray* distinguishable from the present case. In
24 *Gray*, the deputy clerk for the California Supreme Court advised the petitioner “that, in order for the
25 court to consider the material, he would have to file a petition for writ of habeas corpus.” *Gray*, 179
26 Cal. App. 4th at 1195. Here, no such guidance was ever given to petitioner even though the California
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1 Supreme Court frequently provides such advice. *See, e.g., Lujan v. Davis*, No. C 07-00387 CW, 2008
2 U.S. Dist. LEXIS 107796, at *2 (N.D. Cal. Mar. 25, 2008); *Trujillo v. Stainer*, No.
3 1:12-cv-00817-LJO-JLT, 2012 U.S. Dist. LEXIS 128572, at *8 (E.D. Cal. Sept. 10, 2012); *Morgan v.*
4 *Sup. Ct. of L.A.*, No. CV 12-5382-DSF, 2012 U.S. Dist. LEXIS 176299, at *7-8 (C.D. Cal. Oct. 31,
5 2012); *Rojas v. Vasquez*, No. SACV 08-345-CJC, 2009 U.S. Dist. LEXIS 132473, at *4 (C.D. Cal. Jan.
6 12, 2009). Rather, the deputy clerk simply told petitioner that the California Supreme Court could not
7 consider or grant relief of any nature in his case.⁵ Accordingly, the Court declines to dismiss the petition
8 for failure to exhaust state court remedies. *See Scott*, 567 F.3d at 583 (“All exhaustion requires is that
9 the state courts have the opportunity to remedy an error, not that they actually took advantage of the
10 opportunity.” (citing *Picard*, 404 U.S. at 275)).

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12 **II. Procedural Default**

13 Respondent argues that even if petitioner’s claims are exhausted, then his federal petition is
14 procedurally barred because he failed to comply with the state court’s deadline for seeking review of
15 his state habeas petition. Resp’t Mot. at 4-7. In response, petitioner argues that his petition is excused
16 from procedural default because he can show cause and prejudice. Pet’r Sur-reply at 5-11.

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18 **A. Legal Standard**

19 “Federal courts hearing habeas petitions may not review state convictions, even for federal
20 constitutional claims, if the state court judgment procedurally barring the petitioner’s claims rests on
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23 ⁵ In his response to petitioner’s sur-reply, respondent also cites to the decision in *Chambers v.*
24 *Grounds*, No. CV 10–6080–VBF, 2012 WL 5391859 (C.D. Cal. Sept. 21, 2012). Respondent argues
25 that the petitioner in *Chambers* was able to file an original habeas petition with the California Supreme
26 Court even though his petition for review was denied as untimely almost a year prior. Docket No. 49-1
27 at 5 n.1. Respondent argues that *Chambers* supports his position because in that case there is no
28 reference to the petitioner being advised by the California Supreme Court that he could file a original
habeas petition. *Id.* The Court finds this reasoning unpersuasive. There is nothing in the *Chambers*
decision stating whether the petitioner in that case did or did not receive guidance from the Supreme
Court on the availability of filing an original habeas petition. The decision is simply unclear on the
issue. Accordingly, the Court finds respondent’s reliance on *Chambers* unpersuasive.

1 an ‘independent and adequate’ state law ground.” *Insyxiengmay*, 403 F.3d at 665 (citing *Coleman v.*
2 *Thompson*, 501 U.S. 722, 729 (1991)). “Procedural default, a particular type of adequate and
3 independent state ground, ‘applies to bar federal habeas review when the state court has declined to
4 address the petitioner’s federal claims because he failed to meet state procedural requirements.’” *Id.*

5 Procedural default can be overcome if the prisoner is able to demonstrate cause for the default
6 and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to
7 consider the claims will result in a fundamental miscarriage of justice. *Coleman*, 501 U.S. at 750.
8 “[C]ause’ under the cause and prejudice test must be something external to the petitioner, something
9 that cannot fairly be attributed to him: [W]e think that the existence of cause for a procedural default
10 must ordinarily turn on whether the prisoner can show that some objective factor external to the defense
11 impeded counsel’s efforts to comply with the State’s procedural rule.” *Id.* at 729 (internal quotation
12 marks and citation omitted). “To establish prejudice resulting from a procedural default, a habeas
13 petitioner bears ‘the burden of showing not merely that the errors at his trial constituted a possibility of
14 prejudice, but that they worked to his actual and substantial disadvantage, infecting his entire trial with
15 errors of constitutional dimension.’” *White v. Lewis*, 874 F.2d 599, 603 (9th Cir. 1989) (quoting *United*
16 *States v. Frady*, 456 U.S. 152, 170 (1982)). A petitioner must establish factual innocence in order to
17 show that a fundamental miscarriage of justice would result from the application of procedural default.
18 *See Coleman*, 501 U.S. at 748; *Gandarela v. Johnson*, 286 F.3d 1080, 1086 (9th Cir. 2001).

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20 **B. Legal Analysis**

21 The California Supreme Court’s denial of the petition for review as untimely is an independent
22 and adequate state law ground. *See, e.g., Perez*, 2008 U.S. Dist. LEXIS 56790, at *7-8; *see also Walker*
23 *v. Martin*, 131 S. Ct. 1120, 1127-28 (2011) (finding that California’s timeliness requirement for habeas
24 petitioners, although discretionary, constitutes an independent and adequate state law ground).
25 However, petitioner argues that he is excused from his default because he can show cause and prejudice.

26 The Supreme Court has explained that “interference by officials that makes compliance with the
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1 State’s procedural rule impracticable” constitutes cause. *McCleskey v. Zant*, 499 U.S. 467, 494 (1991);
2 *accord Murray v. Carrier*, 477 U.S. 478, 488 (1986). Such interference by officials can include delays
3 in the mail caused by prison officials or the United States Postal Service. *See Nigro v. Sullivan*, 40 F.3d
4 990, 996 (9th Cir. 1994). Here, petitioner did not receive the Court of Appeal’s order until over four
5 days into the ten-day window for him to file a petition for review. Petitioner was unable to prepare his
6 petition for review by the deadline, but did file it on September 11, 2008—only a few days after the
7 deadline. In a letter dated September 12, 2008, the California Supreme Court informed petitioner that
8 in order for it to consider his petition for review, he would need to file an Application for Relief from
9 Default by September 29, 2008. But, petitioner did not receive that letter until October 8, 2008—nine
10 days after the deadline set forth in the letter had passed. This delay in the mail rendered compliance
11 with the September 12, 2008 letter impracticable. Accordingly, petitioner has shown “cause” for his
12 default.

13 Turning to the issue of prejudice, here, a determination of whether petitioner was prejudiced by
14 the alleged violations of federal law involves an examination of the merits of his claims. Accordingly,
15 the Court concludes that it is appropriate to defer ruling on the issue of prejudice until the merits of the
16 petition are addressed.⁶ *See, e.g., Branner v. Chappell*, No. C 90-3219 DLJ, 2014 U.S. Dist. LEXIS
17 5484, at *21 (N.D. Cal. Feb. 13, 2014); *Hartman v. Bagley*, 492 F.3d 347, 358 (6th Cir. 2007); *Freitas*
18 *v. Neven*, No. 2:10-cv-00059-PMP-RJJ, 2011 U.S. Dist. LEXIS 89249, at *10-11 (D. Nev. Aug. 11,
19 2011).

25 ⁶ Because the Court has found that petitioner has shown cause for the default and will defer
26 ruling on whether petitioner was prejudiced, the Court declines to address petitioner’s alternative
27 argument that his default is excused with respect to his ineffective assistance of counsel claims under
28 the Supreme Court’s holdings in *Martinez v. Ryan*, 132 S. Ct. 1309, 1317 (2012) and *Trevino v. Thaler*,
133 S. Ct. 1911, 1918 (2013).

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CONCLUSION

Accordingly, the Court DENIES respondent's motion to dismiss. Specifically, the Court DENIES respondent's motion to dismiss for failure to exhaust state remedies, and the Court DEFERS ruling on the issue of whether petitioner has established prejudice to excuse his default until the merits of the petition are addressed. This order resolves Docket Nos. 41 and 49.

IT IS SO ORDERED.

Dated: March 21, 2014



SUSAN ILLSTON
United States District Judge