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United States District Court
For the Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CLAUDIE EASLEY,
Petitioner,

No. C 09-5477 SI (PR)

**ORDER GRANTING RESPONDENT'S
MOTION TO DISMISS**

v.

HEDGPETH, Warden,
Respondent.

INTRODUCTION

This is a federal habeas corpus petition filed pursuant to 28 U.S.C. § 2254 by a *pro se* state prisoner. For the reasons discussed herein, respondent's motion to dismiss the petition as untimely (Docket No. 6) is GRANTED. Accordingly, the petition is DISMISSED.

BACKGROUND

In 2005, the Alameda Superior Court, after a bench trial, found petitioner guilty of second degree murder, evading a police officer, leaving the scene of an injury accident, and transportation and possession for sale of cocaine base. Petitioner was sentenced to an indeterminate term of thirty years-to-life for the murder conviction, plus a consecutive twenty-three years for the remaining convictions. In response to the convictions, petitioner sought, and was denied, relief on direct and collateral state review. This federal habeas petition, and

1 respondent's motion to dismiss same, followed. Respondent contends that the petition is
2 untimely, and therefore barred by AEDPA's statute of limitations.

3
4 **DISCUSSION**

5 **A. Standard of Review**

6 The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), which applies
7 to every federal habeas petition filed on or after April 24, 1996, contains a statute of limitations
8 codified at 28 U.S.C. § 2244(d). Federal habeas petitions must be filed within one year of the
9 latest of the date on which: (1) the judgment became final after the conclusion of direct review
10 or the time passed for seeking direct review; (2) an impediment to filing an application created
11 by unconstitutional state action was removed, if such action prevented petitioner from filing; (3)
12 the constitutional right asserted was recognized by the Supreme Court, if the right was newly
13 recognized by the Supreme Court and made retroactive to cases on collateral review; or (4) the
14 factual predicate of the claim could have been discovered through the exercise of due diligence.
15 See 28 U.S.C. § 2244(d)(1). "[W]hen a petitioner fails to seek a writ of certiorari from the
16 United States Supreme Court, the AEDPA's one-year limitations period begins to run on the date
17 the ninety-day period defined by Supreme Court Rule 13 expires." *Bowen v. Roe*, 188 F.3d
18 1157, 1159 (9th Cir. 1999).

19
20 **B. Timeliness of the Petition**

21 According to the petition, petitioner was convicted on May 5, 2005. On November 18,
22 2006, the state appellate court affirmed the conviction on direct review, and the state supreme
23 court denied the petition for direct review in January 24, 2007. On August 13, 2008, roughly
24 a year and a half after the state supreme court denied review, petitioner filed a habeas petition
25 in the state appellate court. After that petition was denied, petitioner filed a petition with the
26 Alameda Superior Court on September 10, 2008, a petition the superior court denied on
27 November 7, 2008. On December 17, 2008, petitioner filed a second petition with the state
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1 appellate court, which denied this second petition on December 18, 2008. On January 9, 2009,
2 petitioner filed a petition with the state supreme court, which denied said petition on June 24,
3 2009. The instant federal habeas petition was filed on November 18, 2009.

4 The petition is untimely under AEDPA, unless tolling is warranted. The limitations
5 period started on April 24, 2007, which is ninety days after the California Supreme Court denied
6 the petition for direct review, the time during which petitioner could have filed a petition with
7 the U.S. Supreme Court. Petitioner, then, had until April 25, 2008 to file a timely federal habeas
8 petition. Petitioner did not file his federal habeas petition until November 18, 2009, well after
9 the final filing date. Accordingly, absent statutory or equitable tolling, the federal habeas
10 petition is untimely, and must be dismissed.

11
12 **C. Statutory and Equitable Tolling**

13 **1. Statutory Tolling**

14 For purposes of statutory tolling, the time during which a properly filed application for
15 state post-conviction or other collateral review is pending is excluded from the one-year
16 limitations period. *See* § 2244(d)(2).

17 However, a state habeas petition filed after AEDPA’s statute of limitations ended cannot
18 toll the limitation period. *See Ferguson v. Palmateer*, 321 F.3d 820, 823 (9th Cir. 2003)
19 (“[S]ection 2244(d) does not permit the reinitiation of the limitations period that has ended
20 before the state petition was filed,” even if the state petition was timely filed). Section
21 2244(d)(2) cannot “revive” the limitation period once it has run (i.e., restart the clock to zero);
22 it can only serve to pause a clock that has not yet fully run. “Once the limitations period is
23 expired, collateral petitions can no longer serve to avoid the statute of limitations.” *Rashid v.*
24 *Kuhlmann*, 991 F. Supp. 254, 259 (S.D.N.Y. 1998).

25 Petitioner is not entitled to statutory tolling. As stated above, petitioner had until April
26 25, 2008 to file a federal habeas petition. By that date, however, petitioner had not filed any
27 habeas petitions, state or federal. His first habeas filing was on August 13, 2008, months after
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1 the April 25 deadline for filing a federal habeas petition. Such filing did not toll the limitations
2 period because it was filed after the April 25 deadline. “Once the limitations period is expired,
3 collateral petitions can no longer serve to avoid the statute of limitations.” Rashid, 991 F. Supp.
4 254 at 259.

5 Because petitioner filed his state habeas petitions after AEDPA’s statute of limitations
6 ended, he is not entitled to statutory tolling.

7

8 **2. Equitable Tolling**

9 Petitioner contends that he is entitled to equitable tolling because the prison did not return
10 his legal materials to him until some unspecified time after he had been released from
11 administrative segregation in April 2008. (Pet.’s Opp. to MTD at 5.) Petitioner asserts that
12 without access to such legal materials he was unable to file timely habeas petitions. (Id.)

13 Although the Supreme Court has never “squarely addressed” the question of whether
14 equitable tolling is applicable to AEDPA’s statute of limitations, see Pace v. DiGuglielmo, 544
15 U.S. 408, 418 n.8 (2005), the Ninth Circuit has held the one-year limitations period can be
16 equitably tolled. See Calderon v. United States District Court (Beeler), 128 F.3d 1283, 1288
17 (9th Cir. 1997) (finding § 2244(d) is a statute of limitations and not a jurisdictional bar). In the
18 majority of cases, however, equitable tolling will not be available, because extensions of time
19 should be granted only if “extraordinary circumstances beyond a prisoner’s control make it
20 impossible to file a petition on time.” Id. (internal quotation and citation omitted).

21 The Ninth Circuit has held the petitioner bears the burden of showing such “extraordinary
22 exclusion” is applicable. Miranda v. Castro, 292 F.3d 1063, 1065 (9th Cir. 2002). Further, to
23 be granted equitable tolling, the petitioner must establish two elements: “(1) that he has been
24 pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way.”
25 Raspberry v. Garcia, 448 F.3d 1150, 1153 (9th Cir. 2006) (quoting Pace, 544 U.S. at 419).
26 Where a prisoner fails to show “any causal connection” between the grounds upon which he
27 asserts a right to equitable tolling and his inability to file a federal habeas application timely, the
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1 equitable tolling claim will be denied. Gaston v. Palmer, 417 F.3d 1030, 1034–35 (9th Cir.
2 2005).

3 Here, petitioner has not shown that he is entitled to equitable tolling. His reasons for
4 failing to file — his lack of access to legal materials — are insufficient to support the granting
5 of this extraordinary relief. According to the documents petitioner submitted, he was in
6 administrative segregation for one month in 2008, from March to April. While the alleged delay
7 in having his legal materials returned to him may account for why petitioner was unable to file
8 until some time after April 2008, it does not, however, explain the enormous delay between
9 January 24, 2007, when the state supreme court denied his petition for review, and his first state
10 habeas filing on August 13, 2008. Because petitioner has not shown that some extraordinary
11 circumstance prevented him from filing a timely petition, the Court concludes that he is not
12 entitled to equitable tolling.

13 Accordingly, respondent’s motion to dismiss (Docket No. 6) is GRANTED. The petition
14 is hereby DISMISSED.

15
16 **CONCLUSION**


17 Respondent’s motion to dismiss the petition as untimely (Docket No. 6) is GRANTED.
18 Accordingly, the petition is DISMISSED. This order terminates Docket No. 6.

19 A certificate of appealability will not issue. Petitioner has not shown “that jurists of
20 reason would find it debatable whether the petition states a valid claim of the denial of a
21 constitutional right and that jurists of reason would find it debatable whether the district court
22 was correct in its procedural ruling.” Slack v. McDaniel, 529 U.S. 473, 484 (2000).

23 The Clerk shall enter judgment in favor of respondent, terminate the pending motion, and
24 close the file.

25 **IT IS SO ORDERED.**

26 DATED: June 24, 2010

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28 _____
SUSAN ILLSTON
United States District Judge