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28UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIADE'MIAN A. WILLIAMS,  
Petitioner,

No. C-14-0047 EMC (pr)

v.

**ORDER ON INITIAL REVIEW**R. DAVIS, Warden,  
Respondent.**I. INTRODUCTION**

Petitioner, an inmate at the Valley State Prison, filed this *pro se* action seeking 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 in the United States District Courts.

**II. BACKGROUND**

The petition and attachments thereto provide the following information: Petitioner pled no contest and was convicted in Napa County Superior Court of “transportation/sale of controlled substance” with sentence enhancements for prior convictions and prior prison terms. *See* Docket # 1 at 12. On August 19, 2010, he was sentenced to sixteen years in state prison. He states that he did not appeal, but did file several habeas petitions in state court in 2011 and 2013.

Petitioner then filed this action, seeking a writ of habeas corpus. The petition has no proof of service but does have a verification dated December 11, 2013. The petition came to the Court in an

1 envelope postmarked December 20, 2013, was stamped “received” on December 24, 2013, and was  
2 stamped “filed” on January 3, 2014.

3 **III. 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); *Rose v.*  
7 *Hodges*, 423 U.S. 19, 21 (1975). A district court shall “award the writ or issue an order directing the  
8 respondent to show cause why the writ should not be granted, unless it appears from the application  
9 that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243. Under Rule 4 of the  
10 Rules Governing Section 2254 Cases In The United States District Courts, a district court may also  
11 order the respondent to file another pleading where neither summary dismissal nor service is  
12 appropriate.

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

25 The petition in this action was filed more than a year after Petitioner’s conviction became  
26 final, and may be untimely under the AEDPA’s one-year limitation period. This apparent  
27 procedural problem should be addressed before the Court reaches the merits of the claims raised in  
28 the petition. If the petition is time-barred, the litigants and Court need not expend resources

1 addressing the claims in the petition. Accordingly, pursuant to Rule 4 of the Rules Governing  
2 Section 2254 Cases In The United States District Courts, Respondent must either (1) move to  
3 dismiss the petition on the ground that it is untimely, or (2) inform the Court that Respondent is of  
4 the opinion that a motion to dismiss is unwarranted in this case.

5 **IV. CONCLUSION**

6 Good cause appearing therefor,

7 1. The Clerk shall serve a copy of this order and the petition upon Respondent and  
8 Respondent's attorney, the Attorney General of the State of California. The Clerk shall also serve a  
9 copy of this order on Petitioner.

10 2. Respondent must file with the Court and serve upon Petitioner, on or before  
11 **May 30, 2014**, a motion to dismiss the petition or a notice that Respondent is of the opinion that a  
12 motion to dismiss is unwarranted.

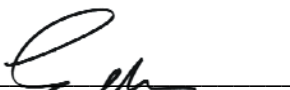
13 3. If Petitioner wishes to oppose the motion to dismiss, he must do so by filing an  
14 opposition with the Court and serving it upon Respondent on or before **June 27, 2014**.

15 4. Respondent may file and serve a reply on or before **July 14, 2014**.

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

20  
21 IT IS SO ORDERED.

22  
23 Dated: March 21, 2014

24   
25 EDWARD M. CHEN  
26 United States District Judge  
27  
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