

UNITED STATES DISTRICT COURT  
For the Northern District of California

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UNITED STATES DISTRICT COURT  
Northern District of California  
San Francisco Division

JEROME W. BORDELON,  
Petitioner,  
v.  
M. E. SPEARMAN, Warden,  
Respondent.

No. C 14-2425 LB  
**ORDER ON INITIAL REVIEW**  
[Re: ECF Nos. 1, 2]

**INTRODUCTION**

Jerome W. Bordelon, an inmate at the Correctional Training Facility in Soledad, filed this *pro se* action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has consented to proceed before a magistrate judge. ECF No. 1 at 7. 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.

**BACKGROUND**

The petition and attachments thereto provide the following information: Mr. Bordelon was convicted in Contra Costa County Superior Court of a sex offense and was found to have suffered prior serious felony convictions. On March 2, 2006, he was sentenced to a term of 30 years in

1 prison. Mr. Bordelon did not appeal. He did, however, file a petition for writ of habeas corpus in  
2 the California Supreme Court on an unstated date that was denied on May 15, 2013.

3 Mr. Bordelon then filed this action. His federal habeas petition has a proof of service stating that  
4 he mailed it to the court on May 14, 2014. *Id.* at 8. The petition came to the court in an envelope  
5 with a May 16, 2014 postmark, was stamped "received" at the courthouse on May 21, 2014, and was  
6 stamped "filed" at the courthouse on May 27, 2014. ECF No. 1-3 at 1; ECF No. 1 at 1.

7 **DISCUSSION**

8 This court may entertain a petition for writ of habeas corpus "in behalf of a person in custody  
9 pursuant to the judgment of a State court only on the ground that he is in custody in violation of the  
10 Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423  
11 U.S. 19, 21 (1975). A district court shall "award the writ or issue an order directing the respondent  
12 to show cause why the writ should not be granted, unless it appears from the application that the  
13 applicant or person detained is not entitled thereto." 28 U.S.C. § 2243. Under Rule 4 of the Rules  
14 Governing Section 2254 Cases In The United States District Courts, a district court may also order  
15 the respondent to file another motion or response where neither summary dismissal nor service is  
16 appropriate.

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

1 The petition in this action was filed more than a year after the petitioner's conviction became  
2 final, and may be untimely under the AEDPA's one-year limitation period. This apparent procedural  
3 problem should be addressed before the court reaches the merits of the claims raised in the petition.  
4 If the petition is time-barred, the litigants and court need not expend resources addressing the claims  
5 in the petition. Accordingly, pursuant to Rule 4 of the Rules Governing Section 2254 Cases In The  
6 United States District Courts, respondent must either (1) move to dismiss the petition on the ground  
7 that it is untimely, or (2) inform the court that respondent is of the opinion that a motion to dismiss is  
8 unwarranted in this case.

9 **CONCLUSION**

10 Good cause appearing therefor,

11 1. The clerk shall serve a copy of this order, the petition, and the "consent or declination to  
12 magistrate judge jurisdiction" form upon respondent and respondent's attorney, the Attorney General  
13 of the State of California. The clerk also shall serve a copy of this order on petitioner.

14 2. Respondent must file with the court and serve upon petitioner, on or before  
15 **August 15, 2014**, a motion to dismiss the petition or a notice that respondent is of the opinion that a  
16 motion to dismiss is unwarranted.

17 3. If petitioner wishes to oppose the motion to dismiss, he must do so by filing an opposition  
18 with the court and serving it upon respondent on or before **September 12, 2014**.

19 4. Respondent may file and serve a reply on or before **September 26, 2014**.

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

24 6. Petitioner's *in forma pauperis* application is GRANTED. ECF No. 2.

25 **IT IS SO ORDERED.**

26 Dated: June 12, 2014



27 LAUREL BEELER  
28 United States Magistrate Judge