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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RIGOBERTO Z. CAMPOS,

No. C 05-3309 SBA (pr)

Petitioner,

v.

ROSANNE CAMPBELL, Warden,

Respondent.

**ORDER DENYING MOTION FOR
EXTENSION OF TIME AS
UNNECESSARY; AND DENYING
CERTIFICATE OF APPEALABILITY**

(Docket no. 27)

Petitioner, proceeding pro se, filed a petition for a writ of habeas corpus pursuant to title 28 U.S.C. § 2254. The Court granted Respondent's motion to dismiss the petition as untimely.

Thereafter, Petitioner filed a motion to extend the time for filing a certificate of appealability (COA). That motion asked for additional time so that Petitioner may conduct legal research in support of a COA motion, which Petitioner noted was a prerequisite to a valid appeal. Petitioner has also filed a Notice of Appeal.

I. Motion for Extension of Time

As a preliminary matter, Petitioner seeks additional time to file a COA motion, but he has also filed a separate timely notice of appeal (docket no. 28), which may be construed also as an application for a COA. See United States v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997); 28 U.S.C. § 2253(c)(3).

Federal Rule of Civil Procedure 6(b) allows the district court to extend the time for taking any action that is required to be done within a specified time under the Federal Rules or a court order. There is no time limit for requesting a COA. See 28 U.S.C. § 2253(c). Moreover, Petitioners need not file a separate COA motion; the Court will construe his notice of appeal as a request for a COA. See Asrar, 116 F.3d at 1270.

Accordingly, Petitioner's motion for an extension of time to file a request for a COA (docket no. 27) is DENIED as unnecessary.

1 **II. Certificate of Appealability**

2 A petitioner may not appeal a final order in a federal habeas corpus proceeding without first
3 obtaining a COA. See 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). Section 2253(c)(1) applies to an
4 appeal of a final order entered on a procedural question antecedent to the merits, for instance a
5 dismissal on statute of limitations grounds. See Slack v. McDaniel, 529 U.S. 473, 483 (2000).

6 "Determining whether a COA should issue where the petition was dismissed on procedural
7 grounds has two components, one directed at the underlying constitutional claims and one directed
8 at the district court's procedural holding." Id. at 484-85. "When the district court denies a habeas
9 petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a
10 COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable
11 whether the petition states a valid claim of the denial of a constitutional right and that jurists of
12 reason would find it debatable whether the district court was correct in its procedural ruling." Id. at
13 484. As each of these components is a "threshold inquiry," the court "may find that it can dispose of
14 the application in a fair and prompt manner if it proceeds first to resolve the issue whose answer is
15 more apparent from the record and arguments." Id. at 485. Supreme Court jurisprudence "allows
16 and encourages" federal courts to first resolve the procedural issue, as was done here. See id.

17
18 The Court has reviewed its Order Granting Respondent's Motion to Dismiss. The petition
19 was dismissed because the statute of limitations deadline was February 11, 2004, this petition was
20 not filed until January 24, 2005, and Petitioner's arguments against dismissal -- that circumstances
21 warrant statutory or equitable tolling to save the petition from being untimely -- were unavailing.
22 Because jurists of reason would not find this conclusion debatable or wrong, the request for a COA
23 is DENIED. The Clerk of the Court shall forward to the Ninth Circuit Court of Appeals the case
24 file, the Court's Order Granting Respondent's Motion to Dismiss, and this Order. See Asrar, 116
25 F.3d at 1270.

26 IT IS SO ORDERED.

27 DATED: 6/21/10

28 
SAUNDRA BROWN ARMSTRONG
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

6 CAMPOS,

7 Plaintiff,

8 v.

9 YARBOROUGH et al,

10 Defendant.
11 _____/

Case Number: CV05-03309 SBA

CERTIFICATE OF SERVICE

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
13 Court, Northern District of California.

14 That on June 22, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
16 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
17 located in the Clerk's office.

18
19 Rigoberto Z. Campos T-00629
20 Mule Creek State Prison
21 P.O. Box 40999
22 Ione, CA 95640-9000

23 Dated: June 22, 2010

24 Richard W. Wieking, Clerk
25 By: LISA R CLARK, Deputy Clerk
26
27
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