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

ROMAN SUNDAY,

Petitioner,

v.

D. K. SISTO, Warden,

Respondent.

No. C 07-05308 SBA (PR)

**ORDER GRANTING THIRD
EXTENSION OF TIME FOR
PETITIONER TO FILE OPPOSITION TO
MOTION TO DISMISS AND
ADDRESSING PENDING MOTIONS**

(Docket nos. 9, 11)

Petitioner, a state prisoner, filed a pro se petition for a writ of habeas corpus. The Court directed Respondent to file an answer to the petition and granted Petitioner leave to file a traverse within thirty days after the answer was filed. In lieu of filing an answer, Respondent has filed a motion to dismiss the instant petition as untimely under 28 U.S.C. § 2244(d), the statute of limitations established by the Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996. Petitioner has not filed an opposition to the motion to dismiss. On October 16, 2008, the Court granted Petitioner an extension of time to file an opposition. On November 4, 2008, the Court granted Petitioner a second extension of time to file an opposition.

Before the Court is Petitioner's third request for an extension of time to file an opposition to Respondent's motion to dismiss. Also before the Court are Petitioner's motion for the Court to issue an Order "Re: Production of Documentary Evidence of Lockdowns at C.S.P. - Calipatria" and another motion entitled "Motion Pursuant to Fed. R. Civ. P. 60(b)(1)," which will both be construed as motions related to his request for an extension of time to file his opposition.

Petitioner requests an extension of time in order "to obtain the necessary materials to defend against the government's allegation that his federal habeas petition is time-barred." (Mot. Pursuant to Fed. R. Civ. P. 60(b)(1) at 3.) He claims that he has requested "C.S.P. - Calipatria's legal coordinator to produce documentation evincing: when the prison was on lockdown between October

1 1, 2005 through December 12, 2006." (Mot. for EOT at 1.) However, he has received no response
2 to his request. (Id.) Thus, he claims he "cannot attempt to compile . . . [an] opposition without such
3 documentary evidence, as one of the predicates of Petitioner's equitable tolling argument is based on
4 no law library access during **lockdowns**." (Id. (citing Calderon v. United States District Court
5 (Beeler), 128 F.3d 1283, 1288 (9th Cir. 1997), overruled in part on other grounds by Calderon v.
6 United States District Court (Kelly), 163 F.3d 530 (9th Cir. 1998) (en banc)) (emphasis in original).)

7
8 The AEDPA, which became law on April 24, 1996, imposed a statute of limitations on
9 petitions for a writ of habeas corpus filed by state prisoners. Petitions filed by prisoners challenging
10 non-capital state convictions or sentences must be filed within one year of the latest of the date on
11 which: (1) the judgment became final after the conclusion of direct review or the time passed for
12 seeking direct review; (2) an impediment to filing an application created by unconstitutional state
13 action was removed, if such action prevented petitioner from filing; (3) the constitutional right
14 asserted was recognized by the Supreme Court, if the right was newly recognized by the Supreme
15 Court and made retroactive to cases on collateral review; or (4) the factual predicate of the claim
16 could have been discovered through the exercise of due diligence. See 28 U.S.C. § 2244(d)(1). The
17 petition may nonetheless be timely if the limitations period was tolled under 28 U.S.C. § 2244(d)(2)
18 for a substantial period of time. The Ninth Circuit holds that the one-year limitation period can be
19 equitably tolled because § 2244(d) is a statute of limitations and not a jurisdictional bar. See Beeler,
20 128 F.3d at 1288.

21 Here, Petitioner alleges that he is entitled to equitable tolling; however, he is unable to make
22 his equitable tolling argument without documents relating to lockdowns at C.S.P. - Calipatria
23 between October 1, 2005 through December 12, 2006. He claims that he has been unsuccessful in
24 obtaining these documents from the prison's "legal coordinator." (Mot. for EOT at 1.) Because
25 Petitioner is incarcerated and has alleged difficulty in obtaining necessary documents, the Court
26 finds that he must be given the opportunity to view the aforementioned documents in order to
27 respond to Respondent's motion to dismiss. In order to expedite matters, no later than **fourteen (14)**
28 **days** from the date of this Order, counsel for Respondent shall take steps to see that the appropriate

1 authorities provide Petitioner with copies of the documents relating to lockdowns at C.S.P. -
2 Calipatria between October 1, 2005 through December 12, 2006.

3 In light of this, the Court GRANTS Petitioner a third extension of time in which to file his
4 opposition to Respondent's motion to dismiss. The parties shall abide by the briefing schedule
5 outlined below. Petitioner's motion for the Court to issue an Order "Re: Production of Documentary
6 Evidence of Lockdowns at C.S.P. - Calipatria" and his motion entitled "Motion Pursuant to Fed. R.
7 Civ. P. 60(b)(1)" are DENIED as unnecessary.

8 CONCLUSION

9 1. No later than **fourteen (14) days** from the date of this Order, counsel for Respondent
10 shall take steps to see that the appropriate authorities provide Petitioner with copies of the
11 documents relating to lockdowns at C.S.P. - Calipatria between October 1, 2005 through December
12 12, 2006.

13 2. Petitioner's motion for the Court to issue an Order "Re: Production of Documentary
14 Evidence of Lockdowns at C.S.P. - Calipatria" (docket no. 9) and his motion entitled "Motion
15 Pursuant to Fed. R. Civ. P. 60(b)(1)" (docket no. 11) are DENIED as unnecessary.

16 3. Petitioner's motion for a third extension of time in which to file his opposition to
17 Respondent's motion to dismiss (docket no. 9) is GRANTED. The time in which Petitioner may file
18 his opposition to Respondent's motion to dismiss will be extended up to and including **forty-five**
19 **(45) days** from the date of this Order. Respondent shall file a reply brief no later than **fifteen (15)**
20 **days** after the date Petitioner's opposition is filed. **No further extensions of time will be granted**
21 **in this case absent exigent circumstances.**

22 4. This Order terminates Docket nos. 9 and 11.

23 IT IS SO ORDERED.

24 DATED: 5/19/09

25 
26 SAUNDRA BROWN ARMSTRONG
27 UNITED STATES DISTRICT JUDGE
28

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

4 ROMAN SUNDAY,
5 Plaintiff,

Case Number: CV07-05308 SBA

6 v.

CERTIFICATE OF SERVICE

7 D.K. SISTO et al,
8 Defendant.

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

11 That on May 21, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
14 in the Clerk's office.

15 Roman Sunday
16 California State Prison - Solano
17 V-11338
18 P.O. Box 4000
19 Vacaville, CA 95696-4000

20 Dated: May 21, 2009

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk

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