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2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 MARION C. STARKS,
6 Petitioner,
7 v.
8 MICHAEL HENNESSEY, et al.,
9 Respondent.

Case No. [18-cv-00683-PJH](#)

**ORDER DISMISSING PETITION;
DENYING CERTIFICATE OF
APPEALABILITY**

Re: Dkt. No. 11

10
11 Petitioner, a former California prisoner, filed a pro se petition for a writ of habeas
12 corpus pursuant to 28 U.S.C. § 2254. The original petition was dismissed with leave to
13 amend and he has filed an amended petition.

14 **BACKGROUND**

15 Petitioner states that he was acquitted after a jury trial but was falsely imprisoned
16 from 2008 to 2010. Docket No. 10 at 1-2. He states he filed appeals that were denied by
17 the state courts in 2010 and 2012. Docket No. 1 at 3.

18 **DISCUSSION**

19 **STANDARD OF REVIEW**

20 This court may entertain a petition for writ of habeas corpus “in behalf of a person
21 in custody pursuant to the judgment of a State court only on the ground that he is in
22 custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.
23 § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet
24 heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An
25 application for a federal writ of habeas corpus filed by a prisoner who is in state custody
26 pursuant to a judgment of a state court must “specify all the grounds for relief available to
27 the petitioner ... [and] state the facts supporting each ground.” Rule 2(c) of the Rules
28

1 Governing § 2254 Cases, 28 U.S.C. § 2254. “[N]otice’ pleading is not sufficient, for the
2 petition is expected to state facts that point to a ‘real possibility of constitutional error.’”
3 Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir.
4 1970)).

5 **LEGAL CLAIMS**

6 Petitioner’s claims are not entirely clear nor are the circumstances surrounding his
7 trial and incarceration. The petition was dismissed with leave to amend to provide more
8 information concerning his claims and to address their timeliness. He has failed to
9 provide any additional information.

10 To the extent petitioner seeks to challenge a conviction from 2008, this case is
11 untimely by many years. The Antiterrorism and Effective Death Penalty Act of 1996
12 (“AEDPA”), which became law on April 24, 1996, imposed for the first time a statute of
13 limitations on petitions for a writ of habeas corpus filed by state prisoners. Petitions filed
14 by prisoners challenging noncapital state convictions or sentences must be filed within
15 one year of the latest of the date on which: (A) the judgment became final after the
16 conclusion of direct review or the time passed for seeking direct review; (B) an
17 impediment to filing an application created by unconstitutional state action was removed,
18 if such action prevented petitioner from filing; (C) the constitutional right asserted was
19 recognized by the Supreme Court, if the right was newly recognized by the Supreme
20 Court and made retroactive to cases on collateral review; or (D) the factual predicate of
21 the claim could have been discovered through the exercise of due diligence. 28 U.S.C. §
22 2244(d)(1). Time during which a properly filed application for state post-conviction or
23 other collateral review is pending is excluded from the one-year time limit. *Id.* §
24 2244(d)(2). Petitioner states that his state appeals were denied in 2010 and 2012. The
25 petition is late by many years.

26 To the extent there was no conviction and petitioner seeks to bring a claim of false
27 imprisonment pursuant to 42 U.S.C. § 1983, this action also appears untimely. Petitioner
28

1 states he was falsely imprisoned from 2008 to 2010. Section 1983 does not contain its
2 own limitations period. The appropriate period is that of the forum state's statute of
3 limitations for personal injury torts. See *Wilson v. Garcia*, 471 U.S. 261, 276 (1985),
4 superseded by statute on other grounds as stated in *Jones v. R.R. Donnelley & Sons*
5 *Co.*, 541 U.S. 369 377-78 (2004). In California, the general residual statute of limitations
6 for personal injury actions is the two-year period set forth at California Civil Procedure
7 Code § 335 and is the applicable statute in § 1983 actions. See *Maldonado v. Harris*,
8 370 F.3d 945, 954 (9th Cir. 2004). California Civil Procedure Code section 352.1
9 recognizes imprisonment as a disability that tolls the statute of limitations when a person
10 is "imprisoned on a criminal charge, or in execution under the sentence of a criminal court
11 for a term of less than for life." Cal. Civ. Proc. Code § 352.1(a). The tolling is not
12 indefinite, however; the disability of imprisonment delays the accrual of the cause of
13 action for a maximum of two years. See *id.* Thus, an inmate has four years to bring a §
14 1983 claim for damages in California, i.e., the regular two year period under section 335,
15 plus two years during which accrual was postponed due to the disability of imprisonment.
16 Assuming plaintiff was provided four years, this action would still be untimely.

17 CONCLUSION

- 18 1. The motion to proceed in forma pauperis (Docket No. 11) is **DENIED** as
19 moot because he has already been granted leave to proceed in forma pauperis.
- 20 2. The petition is **DISMISSED** and a certificate of appealability is **DENIED**.
- 21 3. The clerk shall close this case.

22 **IT IS SO ORDERED.**

23
24 Dated: May 1, 2018



25
26
27 PHYLLIS J. HAMILTON
United States District Judge

1 UNITED STATES DISTRICT COURT
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3
4 MARION C. STARKS,
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CERTIFICATE OF SERVICE


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

11
12 That on May 1, 2018, I SERVED a true and correct copy(ies) of the attached, by placing
13 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
14 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
15 receptacle located in the Clerk's office.

16
17 Marion C. Starks
18 150 Otis St., Apt. 609
19 San Francisco, CA 94103

20 Dated: May 1, 2018

21
22 Susan Y. Soong
23 Clerk, United States District Court

24
25 By: 
26 Kelly Collins, Deputy Clerk to the
27 Honorable PHYLLIS J. HAMILTON
28