

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3  
4 KEITH E. WOODHOUSE,  
5 Petitioner,  
6 v.  
7 PATRICK EATON, Acting Warden,  
8 Respondent.

Case No. [19-cv-04546-YGR](#) (PR)

**ORDER GRANTING RESPONDENT'S  
MOTION TO DISMISS PETITION AS  
UNTIMELY; AND DENYING  
CERTIFICATE OF APPEALABILITY**

9 Petitioner, a state prisoner, filed a *pro se* petition for a writ of habeas corpus pursuant to 28  
10 U.S.C. § 2254. Dkt. 1.

11 Before the Court is Respondent's motion to dismiss the instant petition as untimely under  
12 28 U.S.C. § 2244(d)—the statute of limitations set by the Antiterrorism and Effective Death  
13 Penalty Act of 1996 ("AEDPA"). Dkt. 10. Alternatively, Respondent argues that the sole claim  
14 in the petition is procedurally defaulted. *Id.* at 5-7.

15 Having considered all of the papers filed by the parties, the Court GRANTS Respondent's  
16 motion to dismiss the petition as untimely.

17 **I. BACKGROUND**

18 Following a jury trial, Petitioner was convicted of thirty counts of committing lewd or  
19 lascivious acts on a child under the age of fourteen years. Dkt. 1 at 1-2.<sup>1</sup> The jury found true  
20 thirty multiple victim allegations, one attached to each count, which required alternative  
21 sentencing in Santa Clara County Superior Court Case No. C1198468. *Id.* The charged crimes  
22 involved nine young girls. The trial court sentenced Petitioner to thirty years to life in state prison.  
23 Resp't Ex. 1 at 1.

24 On May 26, 2016, the California Court of Appeal affirmed the judgment in an unpublished  
25 decision. Resp't Ex. 1 at 2, 24. On August 10, 2016, the California Supreme Court denied

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28 <sup>1</sup> Page number citations refer to those assigned by the Court's electronic case management  
filing system and not those assigned by the parties.

1 review. Resp't Ex. 2.

2 On July 17, 2017,<sup>2</sup> Petitioner filed a habeas petition in the Santa Clara County Superior  
3 Court, which denied the petition on August 24, 2017. Resp't Exs. 3 & 4.

4 On September 22, 2017, Petitioner filed a habeas petition in the California Court of  
5 Appeal, which denied the petition on October 13, 2017. Resp't Ex. 5.

6 On October 23, 2017, Petitioner filed a habeas petition in the California Supreme Court,  
7 which denied the petition on January 17, 2018. Resp't Exs. 6 & 7.

8 On March 19, 2018, Petitioner filed his first habeas corpus action in this Court, *Woodhouse*  
9 *v. Anglea*, Case No. 18-cv-01874-YGR (PR). See Dkt. 1 at 9 in Case No. 18-cv-01874-YGR  
10 (PR). Respondent filed a motion to dismiss for failure to exhaust the sole claim in the petition.  
11 See Dkt. 10 in Case No. 18-cv-01874-YGR (PR). In an Order dated January 22, 2019, the Court  
12 granted the motion to dismiss without prejudice and entered judgment. See Dkt. 14 in Case No.  
13 18-cv-01874-YGR (PR). On March 12, 2019, this Court denied a request for a certificate of  
14 appealability. See Dkt. 20 in Case No. 18-cv-01874-YGR (PR). On October 25, 2019, the Ninth  
15 Circuit denied a denied a request for a certificate of appealability. See Dkt. 22 in Case No. 18-cv-  
16 01874-YGR (PR).

17 On March 29, 2019, Petitioner filed a habeas petition in the California Supreme Court  
18 raising the same claim he raises in the present petition. Resp't Ex. 8. On June 26, 2019, the  
19 California Supreme Court denied the petition. Resp't Ex. 9.

20 On July 25, 2019, Petitioner filed the instant petition—his second habeas corpus action in  
21 this Court. Dkt. 1 at 6.

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24 <sup>2</sup> According to the mailbox rule, a *pro se* federal or state habeas petition is deemed filed on  
25 the date it is delivered to prison authorities for mailing. See *Saffold v. Newland*, 250 F.3d 1262,  
26 1268 (9th Cir. 2001), *vacated and remanded on other grounds*, *Carey v. Saffold*, 536 U.S. 214  
27 (2002) (holding that a federal or state habeas petition is deemed filed on the date the prisoner  
28 submits it to prison authorities for filing, rather than on the date it is received by the court). A  
proof of service is sufficient to show “delivery” to prison officials. The Court assumes that  
Petitioner delivered his state and federal petitions to prison officials on the same dates the proofs  
of service were signed or the same dates the petitions were signed (if no proofs of service  
included). See *Koch v. Ricketts*, 68 F.3d 1191, 1193 (9th Cir. 1995) (petitioner assumes risk of  
proving date of mailing). Otherwise, the Court will use the filing date if the record does not  
indicate the date a particular petition was signed.

## II. DISCUSSION

The AEDPA, which became law on April 24, 1996, imposes a statute of limitations on petitions for a writ of habeas corpus filed by state prisoners. Petitions filed by prisoners challenging non-capital state convictions or sentences must be filed within one year of the latest of the date on which: (A) the judgment became final after the conclusion of direct review or the time passed for seeking direct review; (B) an impediment to filing an application created by unconstitutional state action was removed, if such action prevented the petitioner from filing; (C) the constitutional right asserted was recognized by the Supreme Court, if the right was newly recognized by the Supreme Court and made retroactive to cases on collateral review; or (D) the factual predicate of the claim could have been discovered through the exercise of due diligence. *See* 28 U.S.C. § 2244(d)(1)(A)-(D).

A state prisoner with a conviction finalized after April 24, 1996, such as Petitioner, ordinarily must file his federal habeas petition within one year of the date his process of direct review came to an end. *See Calderon v. United States District Court (Beeler)*, 128 F.3d 1283, 1286 (9th Cir. 1997), *overruled in part on other grounds by Calderon v. United States District Court (Kelly)*, 163 F.3d 530 (9th Cir. 1998) (en banc).

The one-year period may start running from “the expiration of the time for seeking [direct] review.” 28 U.S.C. § 2244(d)(1)(A). “Direct review” includes the period within which a petitioner can file a petition for a writ of certiorari from the United States Supreme Court, whether or not the petitioner actually files such a petition. *Bowen v. Roe*, 188 F.3d 1157, 1159 (9th Cir. 1999). Accordingly, if a petitioner fails to seek a writ of certiorari from the United States Supreme Court, AEDPA’s one-year limitations period begins to run on the date the ninety-day period defined by Supreme Court Rule 13 expires. *See Miranda v. Castro*, 292 F.3d 1063, 1065 (9th Cir. 2002) (where petitioner did not file petition for certiorari, his conviction became final ninety days after the California Supreme Court denied review); *Bowen*, 188 F.3d at 1159 (same).

As a threshold matter, once a petitioner is notified that his petition is subject to dismissal based on the AEDPA’s statute of limitations and the record indicates that the petition falls outside the one-year time period, he bears the burden of demonstrating that the limitations period was

1 sufficiently tolled under statutory and/or equitable principles. *See Smith v. Duncan*, 297 F.3d 809,  
 2 814 (9th Cir. 2002) *overruled on other grounds by Pace v. DiGuglielmo*, 544 U.S. 408, 418  
 3 (2005).

4 In the present case, the California Supreme Court denied review on August 10, 2016. The  
 5 judgment became final for purposes of the AEDPA statute of limitations ninety days later, on  
 6 November 8, 2016. *See Miranda*, 292 F.3d at 1065; *Bowen*, 188 F.3d at 1159. The one-year  
 7 limitations period, therefore, began to run on that date. Accordingly, Petitioner had until  
 8 November 8, 2017 to file his federal petition. *See* 28 U.S.C. § 2244(d). Because he did not file  
 9 the present petition until July 25, 2019—almost two years after the limitations period had  
 10 expired—it is untimely unless Petitioner can show that he is entitled to tolling.

11 **A. Statutory tolling**

12 The one-year statute of limitations is tolled under section 2244(d)(2) for the “time during  
 13 which a properly filed application for State post-conviction or other collateral review with respect  
 14 to the pertinent judgment or claim is pending . . . .” 28 U.S.C. § 2244(d)(2). Tolling applies to  
 15 one full round of collateral review. *Carey v. Saffold*, 536 U.S. 214, 223 (2002).

16 In the instant case, the limitations period ran from November 9, 2016 to July 16, 2017, for  
 17 249 days, before Petitioner filed his state habeas petition in the state superior court. Thus, when  
 18 Petitioner filed his first state habeas petition on July 17, 2017, he had 116 days (365 days minus  
 19 249 days) of the limitations period remaining. Pursuant to *Carey*, statutory tolling of the  
 20 limitations period should apply to the entire time he was pursuing state collateral relief if he did  
 21 not delay unreasonably in seeking review in the higher court. *Id.* Because Petitioner initiated his  
 22 first round of state habeas petitions during AEDPA’s limitations period, and did not unreasonable  
 23 delay between those filings, he is entitled to statutory tolling for the entire time period those  
 24 petitions were pending—from July 17, 2017 (the date he filed his state habeas petition in the state  
 25 superior court) to January 17, 2018 (the date the state supreme court denied his state habeas  
 26 petition). As mentioned above, when Petitioner filed his first state habeas petition on July 17,  
 27 2017, he had 116 days of the limitations period remaining. When the clock resumed on January  
 28 18, 2018, Petitioner had 116 more days or up to and until May 14, 2018, to file a timely federal

1 habeas petition.

2 Petitioner is not entitled to statutory tolling for the time period the second round of state  
3 habeas petitions were pending because they were filed on April 4, 2019—after the limitations  
4 period had expired on May 14, 2018. “[S]ection 2244(d) does not permit the reinitiation of the  
5 limitations period that has ended before the state petition was filed.” *Ferguson v. Palmateer*, 321  
6 F.3d 820, 823 (9th Cir. 2003); *Jiminez v. Rice*, 276 F.3d 478, 482 (9th Cir. 2001); *Rashid v.*  
7 *Khulmann*, 991 F. Supp. 254, 259 (S.D. N.Y. 1998) (“The tolling provision does not, however,  
8 ‘revive’ the limitations period (i.e., restart the clock at zero); it can only serve to pause a clock that  
9 has not yet fully run. Once the limitations period is expired, collateral petitions can no longer  
10 serve to avoid a statute of limitations.”). Nor is Petitioner entitled to continuous statutory tolling  
11 between his first round of state habeas petitions and his subsequent rounds of state habeas  
12 petitions. *See Biggs v. Duncan*, 339 F.3d 1045, 1048 (9th Cir. 2003) (no tolling for the period  
13 between unrelated sets of state habeas corpus actions).

14 Petitioner’s original federal petition in this case was filed on March 19, 2018, which was  
15 *before* the aforementioned statutorily-tolled filing deadline of the May 14, 2018. However, as  
16 mentioned, that first federal habeas petition was denied for failure to exhaust judicial remedies.  
17 Respondent argues that the timely filing of Petitioner’s original petition does not toll AEDPA’s  
18 limitations period with respect the instant petition (his second habeas petition). Dkt. 10 at 4  
19 (citing *Duncan v. Walker*, 533 U.S. 167, 172 (2001) (a federal petition does not qualify for tolling  
20 under section 2244(d)). This Court agrees with Respondent and, thus, it finds that statutory tolling  
21 does not save the instant petition from being found to be untimely.

22 Because Petitioner did not meet the one-year requirement for filing the instant federal  
23 habeas petition and he is not entitled to statutory tolling, his petition is barred as untimely under  
24 28 U.S.C. § 2244(d)(1) unless he can show he is entitled to equitable tolling.

25 **B. Equitable Tolling**

26 The Supreme Court has determined that AEDPA’s statute of limitations is subject to  
27 equitable tolling in appropriate cases. *Holland v. Florida*, 560 U.S. 631, 645 (2010). “When  
28 external forces, rather than a petitioner’s lack of diligence, account for the failure to file a timely

1 claim, equitable tolling of the statute of limitations may be appropriate.” *Miles v. Prunty*, 187  
 2 F.3d 1104, 1107 (9th Cir. 1999). Equitable tolling, however, is unavailable in most cases, because  
 3 extensions of time should be granted only if “extraordinary circumstances beyond a prisoner’s  
 4 control make it impossible to file a petition on time.” *Beeler*, 128 F.3d at 1288 (citation and  
 5 internal quotation marks omitted). The prisoner must show that “the ‘extraordinary  
 6 circumstances’ were the cause of his untimeliness.” *Spitsyn v. Moore*, 345 F.3d 796, 799 (9th Cir.  
 7 2003) (citations omitted). The petitioner bears the burden of showing he is entitled to equitable  
 8 tolling, and the determination of whether such tolling applies is a fact-specific inquiry. *Id.* Thus,  
 9 the petitioner bears the burden of showing that this “extraordinary exclusion” should apply to him,  
 10 *Miranda v. Castro*, 292 F.3d 1063, 1065 (9th Cir. 2002), that “the extraordinary circumstances  
 11 were the cause of his untimeliness . . . and that the extraordinary circumstances made it impossible  
 12 to file a petition on time,” *Ramirez v. Yates*, 571 F.3d 993, 997 (9th Cir. 2009) (internal quotation  
 13 marks, brackets, and citations omitted).

14 Here, Petitioner has not alleged that he is entitled to equitable tolling. Thus, nothing  
 15 currently in the record suggests the possibility of equitable tolling. In his petition, Petitioner  
 16 alleges no facts from which the Court could infer that his failure to raise his claims prior to the  
 17 expiration of the limitations period was because of circumstances that were beyond his control and  
 18 that made it impossible to file a timely federal petition. Thus, it was Petitioner’s delay in pursuing  
 19 his state court remedies, rather than extraordinary circumstances, that led him to exceed the  
 20 limitations period. *See Miranda*, 292 F.3d at 1065. The limitations period will not be equitably  
 21 tolled.

22 Accordingly, Respondent’s motion to dismiss is GRANTED, and the petition is  
 23 DISMISSED because it was not timely filed under 28 U.S.C. § 2244(d)(1).<sup>3</sup>

### 24 **III. CERTIFICATE OF APPEALABILITY**

25 The federal rules governing habeas cases brought by state prisoners have been amended to  
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27 <sup>3</sup> Because the Court is granting Respondent’s motion to dismiss the petition as untimely, it  
 28 need not address Respondent’s alternative argument that the sole claim in the petition is  
 procedurally defaulted.

1 require a district court that dismisses or denies a habeas petition to grant or deny a certificate of  
2 appealability (“COA”) in its ruling. *See* Rule 11(a), Rules Governing § 2254 Cases, 28 U.S.C.  
3 foll. § 2254 (effective December 1, 2009).

4 For the reasons stated above, Petitioner has not shown “that jurists of reason would find it  
5 debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529  
6 U.S. 473, 484 (2000). Accordingly, a COA is DENIED.

7 **IV. CONCLUSION**

8 For the reasons outlined above, the Court orders as follows:

9 1. Respondent’s motion to dismiss the petition as untimely is GRANTED, and this  
10 action is DISMISSED with prejudice. Dkt. 10.

11 2. A certificate of appealability is DENIED. Petitioner may seek a certificate of  
12 appealability from the Ninth Circuit Court of Appeals.

13 4. The Clerk of the Court shall terminate all pending motions and close the file.

14 5. This Order terminates Docket No. 10.

15 IT IS SO ORDERED.

16 Dated: March 1, 2021

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19 JUDGE YVONNE GONZALEZ ROGERS  
20 United States District Judge  
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United States District Court  
Northern District of California