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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ANTHONY M. RAMIREZ,
Plaintiffs,
v.
JAMES A. YATES, Warden, et al,
Defendants.

Case No. C-03-01817 RMW

**ORDER DENYING DEFENDANTS'
MOTION TO DISMISS**

[Re Dkt. Nos. 39, 118]

Anthony Ramirez's petition for a writ of habeas corpus is before the court on remand from the Ninth Circuit with instructions to make necessary findings of fact to resolve whether petitioner is entitled to equitable tolling for two separate periods: (1) May 21, 2002 to August 1, 2002; and (2) February 26, 2003 to July 11, 2003. *Ramirez v. Yates*, 571 F.3d 993, 1001 (9th Cir. 2009). The instructions conclude that "[i]f the district court determines that equitable tolling is unwarranted during either period it must dismiss the petition as untimely. Otherwise it should proceed to the merits." *Id.*

After receipt of the remand, the court ordered Ramirez to file an affidavit setting forth the facts he believes are material to his claim for equitable tolling and to answer certain questions so that the court could determine the timeliness issue. Order, Dkt. No. 76. After being given an

1 extension of time because of a prison lockdown, petitioner filed a supplemental response
2 including an affidavit. Petr.'s Resp., Dkt. No. 101. The court now makes the necessary findings
3 of fact and resolves petitioner's claims for equitable tolling for the two periods in question.

4 For the following reasons, the court finds that the statute of limitations is equitably tolled
5 during each period in question and therefore Ramirez's petition for habeas corpus is timely.

6 I. BACKGROUND

7 Ramirez was convicted of residential burglary and sentenced to fifty years-to-life in state
8 prison. His direct appeals were unsuccessful, and the state court judgment became final on May
9 21, 2002. Without any tolling, Ramirez had until May 21, 2003, to file a timely federal habeas
10 petition under the Antiterrorism and Effective Death Penalty Act ("AEDPA"). Ramirez did not
11 file a federal habeas petition until June 14, 2004. Therefore, in order for the petition to be timely,
12 the court would need to toll the statute of limitations from May 21 to June 14, 2004.

13 On September 28, 2006, the court granted respondent's motion to dismiss the habeas
14 petition as untimely.

15 In vacating this court's dismissal of Ramirez's petition as untimely, the Ninth Circuit
16 determined the following: (1) Ramirez may be entitled to equitable tolling from May 21, 2002, to
17 August 1, 2002, because he lacked knowledge that his first state habeas petition had been denied;
18 (2) Ramirez may be entitled to equitable tolling from February 26, 2003, to July 11, 2003,
19 because he was in administrative segregation and lacked access to his legal files; (3) he is not
20 entitled to equitable tolling for the period from July 11, 2003, to October 1, 2003, on his claim of
21 restricted law library and copier access; (4) Ramirez is entitled to statutory tolling from December
22 28, 2002, to February 5, 2003, in which his state *coram nobis* petition was pending; (5) Ramirez
23 is not entitled to statutory tolling from February 6, 2003, to March 17, 2003, during the pendency
24 of his appeal from the denial of his *coram nobis* petition; (6) Ramirez is not entitled to statutory
25 tolling from September 20, 2003, to December 28, 2003, while his state court discovery motions
26 were pending; and (7) Ramirez is not entitled to have his limitations period begin on October 1,
27 2003, under 28 U.S.C. § 2244(d)(1)(B) (allows tolling to the date on which any Constitutional
28 impairment removed). *Ramirez*, 571 F.3d at 998-1001). The court now reviews the factors

1 giving rise to equitable tolling and determines whether they provide the bases for equitable tolling
2 here.

3 II. ANALYSIS

4 A. Legal Standard for Equitable Tolling

5 The AEDPA sets a one-year statute of limitations for filing a federal habeas petition. 28
6 U.S.C. § 2244(d)(1). This statute of limitations may be subject to equitable tolling. *Holland v.*
7 *Florida*, 130 S.Ct. 2549, 2560 (2010). Equitable tolling is unavailable in most cases and is
8 appropriate only if extraordinary circumstances beyond a prisoner's control make it impossible to
9 file a petition on time. *Miles v. Prunty*, 187 F.3d 1104, 1107 (9th Cir.1999). The threshold
10 necessary to trigger equitable tolling under AEDPA is very high. *Id.* A petitioner must establish
11 that: (1) he has been pursuing his rights diligently, and (2) some extraordinary circumstance stood
12 in his way. *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005). In addition, the petitioner must
13 show that the extraordinary circumstance was the cause of his untimeliness and that the
14 extraordinary circumstance made filing a petition on time impossible. *Ramirez*, 571 F.3d at 997.
15 "It will normally be much more difficult for a prisoner to demonstrate causation where he
16 encounters the 'extraordinary circumstances' in the beginning or middle of the limitations period
17 than where he encounters them at the end of limitations period. This is the case because, if the
18 prisoner is diligently pursuing his habeas petition, the one-year limitations period will ordinarily
19 give him ample opportunity to overcome such early obstacles." *Allen v. Lewis*, 255 F.3d 798, 800
20 (9th Cir. 2001).

21 B. May 21, 2002 to August 1, 2002

22 On April 4, 2002, Ramirez delivered his first state habeas petition. On May 8, 2002, his
23 first state habeas petition was denied. On May 21, 2002, Ramirez's state court conviction became
24 final. Ramirez alleges that he did not receive notice of the denial of his first state habeas petition
25 until August 1, 2002, and thus seeks equitable tolling during the period between May 21, 2002,
26 and August 1, 2002.

27 A "prisoner's lack of knowledge that the state courts have reached a final resolution can
28 provide grounds for equitable tolling if the prisoner has acted diligently in the matter." *Ramirez*,

1 571 F.3d at 997 (quoting *Woodward v. Williams*, 263 F.3d 1135, 1143 (10th Cir. 2001)). *See also*
2 *White v. Ollison*, 530 F. Supp. 2d 1077, 1083 (C.D. Cal. 2007) (finding White was entitled to
3 equitable tolling for the entire period between when the Superior Court denied his habeas corpus
4 petition and when he received notice of the denial). Accordingly, the Ninth Circuit remanded for
5 this court to determine: (1) on what date petitioner actually received notice of the state court's
6 ruling regarding his first state habeas petition, (2) whether petitioner acted diligently to obtain
7 notice, and (3) whether the alleged delay of notice caused the untimeliness of his federal filing
8 and made a timely filing of the instant habeas petition impossible.

9 **1. Receipt of Notice**

10 Ramirez originally alleged that he did not receive notice of the denial of his first state
11 habeas petition until August 1, 2002, and thus sought equitable tolling during the period between
12 May 21, 2002 and August 1, 2002. However, he has corrected his allegation to acknowledge
13 receipt on July 22, 2002. The record indicates that petitioner received actual notice that his first
14 state habeas petition had been denied on July 22, 2002 and not August 1, 2002. According to
15 Ramirez's own motion for extension of time based on equitable tolling, he received notification
16 that his first state habeas petition had been denied on July 22, 2002. *See* Dkt. No. 7 at 4. This is
17 supported by Ramirez's incoming mail log and shows that petitioner received mail from
18 "Superior Crt. Criminal Div. S.F. CA 94103" on July 22, 2002. Dkt. # 7, Ex. 19. On the mail
19 log, in Ramirez's own handwriting, there is a notation indicating that the correspondence received
20 was "notification of denial of habeas writ #4391." *Id.* The court, therefore, finds that Ramirez
21 received notice of the state court's ruling regarding his first state habeas petition on July 22, 2002.

22 **2. Diligence**

23 During the intervening period between submitting his habeas petition on April 4, 2002,
24 and receiving notice of denial on July 22, 2002, Ramirez sent two inquiries to the San Francisco
25 Superior Court. Dkt. 101, Petr.'s Aff. ¶ 4. On May 15, 2002, petitioner mailed a "Request for
26 Notification of Judge Moscone's Disposition on Habeas Corpus Writ No. 4391" to the San
27 Francisco Superior Court. *See* Dkt No. 15 Ex. 4. On July 9, 2002, petitioner sent another letter to
28 Judge Moscone inquiring as to the disposition of his habeas petition. *See* Dkt. No. 15 Ex. 5.

1 Based on these two attempts to ascertain the status of his habeas petition, the court finds that
2 petitioner acted diligently to obtain notice.

3 **3. Causation and Impossibility**

4 In order to qualify for equitable tolling for the 62-day period between May 21, 2002, and
5 July 22, 2002, Ramirez must show that this delay in notification or this delay combined with
6 other extenuating circumstances, caused the untimeliness of his federal filing and made a timely
7 filing of the instant habeas petition impossible. *Ramirez*, 571 F.3d at 1000. The Ninth Circuit
8 found that "it will normally be much more difficult for a prisoner to demonstrate causation where
9 he encounters the 'extraordinary circumstances' in the beginning or middle of the limitations
10 period." *Allen v. Lewis*, 255 F.3d 798, 800 (9th Cir. 2001) *on reh'g en banc*, 295 F.3d 1046 (9th
11 Cir. 2002). In most cases, a 62-day delay in notification, standing alone at the beginning of the
12 limitations period, would not, without more, make timely filing impossible because the petitioner
13 would still have had ten months remaining to prepare and file a federal habeas petition. However,
14 the court must consider in Ramirez's case whether the delay in notification and the later lack of
15 access to his legal file made a timely filing impossible. "It is enough to show that the two
16 circumstances *together* made a timely filing impossible. *Ramirez*, 571 F.3d at 1000.

17 **C. February 26, 2003 to July 11, 2003**

18 On February 26, 2003, petitioner was attacked in prison, resulting in serious bodily
19 injuries requiring hospitalization. *Ramirez Decl.* ¶ 4, Dkt. No. 7. Upon being discharged from
20 the hospital, petitioner was placed in administrative segregation. *Id.* ¶ 7. Ramirez seeks equitable
21 tolling from February 26, 2003, until July 11, 2003, because he was denied access to his legal
22 materials during this period. *Id.* ¶ 12

23 "[I]t is unrealistic to expect a habeas petitioner to prepare and file a meaningful petition on
24 his own within the limitations period without access to his legal file." *Espinoza-Matthews v.*
25 *California*, 432 F.3d 1021, 1027 (9th Cir. 2005) (quotations omitted). Accordingly, the Ninth
26 Circuit remanded for this court to determine: (1) whether petitioner pursued his rights diligently
27 and (2) whether lack of access to petitioner's legal file made a timely filing impossible.

1 **1. Diligence**

2 Petitioner made numerous attempts to gain access to his legal file while he was in
3 administrative segregation. On April 15, 2003, petitioner wrote a letter to this court requesting an
4 order providing him with access to his legal materials. *See* Dkt. No. 1. On April 25, 2003,
5 petitioner submitted an inmate appeal form requesting access to his legal file. *See* Dkt. No. 15
6 Ex. 10. Between May 25, 2003, and July 3, 2003, petitioner wrote a series of letters to this court,
7 informing the court that he was still being denied access to his legal work and requesting an order
8 directing the prison warden to give him access to his legal papers. *See* Dkt. Nos. 3, 5, 6. In light
9 of petitioner's many attempts to obtain access to his legal file, the court finds that he pursued his
10 rights diligently.

11 **2. Causation and Impossibility**

12 In order to qualify for equitable tolling for the 135-day period between February 26, 2003,
13 and July 11, 2003, petitioner must show that this lack of access to his legal materials, alone or in
14 combination with the 62-day delay in getting notice of the denial of his state habeas a petition
15 caused the untimeliness of his federal filing and made timely filing of the federal petition
16 impossible. Courts have found that a petitioner's lack of access to his legal files, especially near
17 the time the petition is due makes it impossible for the petitioner to timely file. *See Espinoza-*
18 *Matthews v. California*, 432 F.3d 1021, 1027-28 (9th Cir. 2005) (granting equitable tolling for the
19 petitioner's entire 11 month stay in administrative segregation where he was denied access to his
20 legal papers despite repeated attempts to obtain them); *Spitsyn v. Moore*, 345 F.3d 796, 801 (9th
21 Cir. 2003).

22 Ramirez was in administrative segregation without his legal file for the months leading up
23 to and including June 29, 2003, the day his petition was otherwise due (one-year limitation and 39
24 days of statutory tolling). Petr.'s Aff. ¶ 5. In his supplemental filing, Ramirez says that it was
25 impossible for him to file "without his court transcripts, the clerks and court reporters transcripts."
26 Petr.'s Resp. at 10. He asserts that he needed to comb them to identify potential claims. *Id.* The
27 court agrees with Ramirez and established Ninth Circuit precedent in *Espinoza-Matthews* and
28

1 *Spitsyn*: it is generally impossible for a pro se prisoner to file a habeas petition when he is denied
2 access to his legal file for a significant period of time around the date the petition is due.

3 In light of these facts, the court finds that Ramirez is entitled to equitable tolling for the
4 entire 135-day period he was without his legal file while in the hospital and in administrative
5 segregation from February 26 to July 11, 2003.

6 **D. The Two Circumstances Together**

7 The Ninth Circuit directed this court to find equitable tolling for both periods if Ramirez
8 showed that "the two circumstances together made a timely filing impossible." *Ramirez*, 571
9 F.3d at 1000. It held that Ramirez "need not prove that the two 'extraordinary circumstances' that
10 he alleges prevented him from filing a timely petition each *independently* made a timely filing
11 'impossible.' It is enough to show that the two circumstances *together* made a timely filing
12 impossible. *Id.*" Without equitable tolling, Ramirez had until June 29, 2003 to file. If he is given
13 equitable tolling for both periods in question, he had until January 14, 2004 to file. However,
14 Ramirez delivered his second state habeas petition on December 28, 2004, which would entitle
15 him to statutory tolling until March 2, 2005 when the California Supreme Court denied the state
16 petition. Ramirez filed his federal habeas petition on June 14, 2004.

17 The court finds the 62-day period when Ramirez did not have notice of the denial of his
18 first state habeas petition combined with the 135-day period when he lacked access to his legal
19 file made timely filing impossible. When he received notice of the denial of his first state habeas,
20 he reasonably would have believed he had until June 29, 2003 to file. He cannot be faulted for
21 not having filed before February 26, 2003 as he had sufficient time left in which to file. He then
22 was hospitalized and following his hospitalization placed in administrative segregation. He had
23 no access to his legal file during this period and when he gained access to his legal file on July 11,
24 2003 his time to file had expired absent equitable tolling. Since it was impossible for him to have
25 filed without access to his legal file, tolling is appropriate for the period he was hospitalized and
26 in administrative segregation. With 236 days of statutory and equitable tolling, he had until
27 January 12, 2004 to file. Since he delivered his second state habeas petition on December 28,
28 2004, statutory tolling ran until the California Supreme Court denied his second state habeas

1 petition on March 5, 2005. Therefore, Ramirez's June 14, 2004 filing of his federal habeas
2 petition was timely.

3 III. CONCLUSION

4 Having found that equitable tolling is warranted for both periods, the court concludes that
5 the petition is timely. Ramirez's state court judgment became final on May 21, 2002, and was due
6 on May 21, 2003. Taking into account the 39 days of statutory tolling that he is entitled to and
7 the 62 and 135 days of equitable tolling, he had until January 12, 2004, to file a timely federal
8 habeas petition. Ramirez delivered his second state habeas petition on December 28, 2003, which
9 statutorily tolled the limitations period beyond June 14, 2004, when he filed his federal petition.
10 The court therefore DENIES the government's motion to dismiss Ramirez's petition as untimely.

11 As the court has ruled, Ramirez's motion to expedite is moot. *See* Dkt. No. 118.

12 The respondent is to answer the petition as ordered on September 12, 2005. He may raise
13 timeliness as an affirmative defense, if he contends that any of the material facts considered by
14 the court are in dispute.

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17 Dated: March 21, 2013



Ronald M. Whyte
United States District Court Judge