

1 condemned prisoners are required to follow in capital habeas actions in the District Courts of the
2 Ninth Circuit. The Court rejects Petitioner's arguments in this regard, as the Court has an
3 obligation to ensure that public funds are not wasted.


4 However, budgeting the present action has been particularly and unusually time-
5 consuming. As a result, Petitioner's budget is finally being approved (with virtually all of the
6 hours and expenses requested by Petitioner being granted) during the week that the petition is
7 currently due. It is therefore simply impossible for Petitioner to complete his petition before the
8 current deadline; Petitioner needs two additional months.

9 The Court finds and concludes that Petitioner has been pursuing his rights diligently yet
10 extraordinary circumstances stand in his way and prevent timely filing of his capital habeas
11 petition. Accordingly, the Court grants Petitioner's Second Motion for Equitable Tolling, (Docs.
12 Nos. 23 & 25); the Court need not consider Petitioner's additional arguments in support of his
13 Motion. Petitioner shall file his finalized petition on or before November 28, 2012. The Court
14 does not anticipate that additional equitable tolling will be warranted.

15 Although Petitioner has been diligent in attempting to prepare his petition, he was not
16 diligent in moving for additional equitable tolling. As a result, Respondent was unfairly
17 burdened in responding to Petitioner's motion; Respondent nonetheless responded promptly and
18 professionally in a particularly praiseworthy manner. Accordingly, the Court grants
19 Respondent's Motion to Accept Late Filing of Response in Opposition to Petitioner's Second
20 Motion for Equitable Tolling, (Docs. Nos. 27 & 29); the Clerk shall terminate as moot the
21 parties' related Stipulation and Proposed Order to Shorten Time, (Doc. No. 26). Petitioner is
22 admonished to file future motions in a timely manner.

23 *It is so ordered.*

24
25
26 DATED: September 25, 2012


EDWARD J. DAVILA
United States District Judge

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

5 ROBERT LEE SMITH, JR.,
6 Plaintiff,

Case Number: CV11-03062 EJD

7 **CERTIFICATE OF SERVICE**

8 v.

9 MICHAEL MARTEL et al,
10 Defendant.

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

13 That on September 25, 2012, I SERVED a true and correct copy(ies) of the attached, by placing
14 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
15 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
16 delivery receptacle located in the Clerk's office.

17 California Appellate Project
18 Federal Court Docketing
19 101 Second Street Suite 600
20 San Francisco, CA 94105

21 Michael David Laurence
22 Habeas Corpus Resource Center
23 303 Second Street Suite 400
24 San Francisco, CA 94107

25 Robert Lee Smith H-95100
26 San Quentin State Prison
27 San Quentin, CA 94974

28 Dated: September 25, 2012

Richard W. Wieking, Clerk
/s/ By: Elizabeth Garcia, Deputy Clerk

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