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

DANNY JONES,

Petitioner,

v.

STATE OF CALIFORNIA,

Respondent.

No. C 13-01717 EJD (PR)

ORDER OF DISMISSAL; GRANTING  
MOTION FOR LEAVE TO PROCEED  
*IN FORMA PAUPERIS*

(Docket Nos. 7 & 8)

On April 16, 2013, Petitioner, a state prisoner proceeding pro se, filed a motion for an extension of time seeking six to twelve months “to prepare a writ.” (Docket No. 2.) Petitioner’s motion was granted in part. (Docket No. 9.) Petitioner was instructed to file a petition for writ of habeas corpus by June 20, 2013. (Id.) Petitioner has filed a letter requesting additional time to file a petition. (Docket No. 11.)

It is obvious that Petitioner seeks to toll the statute of limitations in order to file a federal habeas petition challenging his state petition. Article III, Section 2 of the United States Constitution restricts adjudication in federal courts to “Cases” and “Controversies.” See Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 471 (1982). There is no concrete dispute for this Court to decide: Petitioner’s request in essence asks the court to

1 determine in advance whether his petition for writ of habeas corpus will be time-barred  
2 if it is filed at some unspecified date in the future which may or may not be within the  
3 one-year period prescribed by 28 U.S.C. § 2244(d). This Court could not grant the  
4 requested relief without offending the Constitution's case or controversy requirement.  
5 Finally, Petitioner may seek relief from the statute of limitations under 28 U.S.C. §  
6 2244(d) once he files a petition in federal court. Although Petitioner obtains no relief  
7 today, he is not forever barred from requesting relief. See Calderon v. United States  
8 Dist. Court (Beeler), 128 F.3d 1283, 1288-89 (9th Cir. 1997) (Section 2244(d) is subject  
9 to equitable tolling, although such tolling will not be available in most cases because  
10 extensions of time should only be granted if extraordinary circumstances beyond a  
11 prisoner's control make it impossible to file a petition on time), cert. denied, 522 U.S.  
12 1099, and cert. denied, 523 U.S. 1061 (1998), overruled in part on other grounds by  
13 Calderon v. United States District Court (Kelly), 163 F.3d 530 (9th Cir. 1998) (en  
14 banc), cert. denied, 526 U.S. 1060 (1999). If and when Petitioner files a late habeas  
15 petition, he may make his tolling argument. At that point, and not before then, the  
16 Court will consider whether the statute of limitations should be tolled. The motion for  
17 an extension of time is DENIED.

### 18 19 CONCLUSION

20 There is no case or controversy over which the Court may exercise jurisdiction.  
21 Accordingly, the above-entitled action is hereby DISMISSED without prejudice to  
22 Petitioner's filing a new case with a petition for a writ of habeas corpus or a complaint  
23 for other relief.

24 Petitioner's motion for leave to proceed in forma pauperis, (Docket No. 8), is  
25 GRANTED. Docket No. 7 is DENIED as duplicative.

26 The Clerk shall close the file.

27 DATED: 7/3/2013

28   
EDWARD J. DAVILA  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

DANIEL JONES,

Petitioner,

v.

STATE OF CALIFORNIA,

Respondent.

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Case Number: CV13-01717 EJD

**CERTIFICATE OF SERVICE**

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

That on 7/3/2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Danny Jones AA-4707  
High Desert State Prison  
P. O. Box 3030  
Susanville, CA

Dated: 7/3/2013

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