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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MICHAEL JACKSON,
Plaintiff,
v.
ERIC ARNOLD,
Defendant.

Case No. 16-CV-00234-LHK

**ORDER DIRECTING RESPONDENT
TO FILE A MOTION TO DISMISS**

Re: Dkt. No. 1

Petitioner Michael Jackson, a state prisoner, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on January 13, 2016. For the reasons that follow, the Court issues an order directing Respondent Eric Arnold to file a motion to dismiss.

I. BACKGROUND

In 1983, Petitioner was found guilty of two counts of first degree murder, two counts of attempted first degree murder, and four counts of kidnapping. Petitioner was sentenced to two consecutive life sentences without the possibility of parole. The California Court of Appeal upheld Petitioner’s conviction on December 18, 1985. The California Supreme Court denied review of Petitioner’s convictions on June 30, 1986, and the United States Supreme Court subsequently denied certiorari. Petitioner then filed a petition in federal court for a writ of habeas

1 corpus, which was denied on August 22, 1988.

2 On June 20, 2012, Petitioner filed a state habeas petition in the Alameda County Superior
3 Court, raising a 14th Amendment claim that was not part of Petitioner’s previous appeals and
4 federal habeas petition. The Alameda County Superior Court denied Petitioner’s state habeas
5 petition on December 13, 2013. On April 16, 2014, Petitioner filed an identical state habeas
6 petition with the California Court of Appeal, which was denied on April 17, 2014. On September
7 24, 2014, Petitioner filed an identical state habeas petition with the California Supreme Court,
8 which was denied on January 14, 2015.

9 On January 13, 2016, Petitioner filed the instant petition for a writ of habeas corpus, which
10 raises the same 14th Amendment issues as Plaintiff’s 2012-2015 state habeas petitions.

11 **II. DISCUSSION**

12 The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), which became
13 law on April 24, 1996, imposed for the first time a statute of limitations on petitions for a writ of
14 habeas corpus filed by state prisoners. Petitions filed by prisoners challenging non-capital state
15 convictions or sentences must be filed within one year of the latest of the date on which: (A) the
16 judgment became final after the conclusion of direct review or the time passed for seeking direct
17 review; (B) an impediment to filing an application created by unconstitutional state action was
18 removed, 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 Court and
20 made retroactive to cases on collateral review; or (D) the factual predicate of the claim could have
21 been discovered through the exercise of due diligence. 28 U.S.C. § 2244(d)(1).

22 District courts are permitted, but not obliged, to consider, *sua sponte*, the timeliness of a
23 state prisoner’s habeas petition. *Day v. McDonough*, 547 U.S. 198, 210 (2006). Once a petitioner
24 is notified that his petition is subject to dismissal based on AEDPA’s statute of limitations and the
25 record indicates that the petition falls outside the one-year time period, the petitioner bears the
26 burden of demonstrating that the limitation period was sufficiently tolled under statutory and/or
27 equitable principles. *See Smith v. Duncan*, 297 F.3d 809, 814 (9th Cir. 2002).

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Based on the record before the Court, Respondent is directed to file a motion to dismiss on procedural grounds, or notify the Court that it does not believe such a motion is warranted.

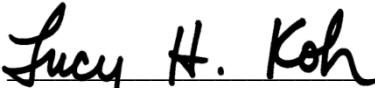
III. CONCLUSION

Respondent is directed to file a motion to dismiss on procedural grounds **within sixty (60) days** of the filing date of this order, or notify the Court that it does not believe such a motion is warranted. If Respondent files a motion to dismiss, Petitioner shall file a response **within twenty-eight (28) days** of Respondent’s motion. Respondent shall file a reply within **fourteen (14) days** thereafter.

The Clerk shall serve by mail a copy of this order and the petition upon the Respondent and the Respondent’s attorney, the Attorney General of the State of California. The Clerk shall also serve a copy of this order on Petitioner and Petitioner’s counsel.

IT IS SO ORDERED.

Dated: March 30, 2016



LUCY H. KOH
United States District Judge