

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILED
2010 APR 21 PM 2:26
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY YMH DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FRANCISCO RAMIREZ,
Petitioner,
vs.
MIKE D. McDONALD, Warden
Respondent.

Civil No. 10-0694 BEN (POR)
ORDER:
**(1) DENYING REQUEST FOR
EXTENSION OF TIME; AND**
**(2) DISMISSING CASE WITHOUT
PREJUDICE**

Petitioner, a state prisoner proceeding pro se, has submitted a document wherein he requests an extension of time to file a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254.

FAILURE TO FILE PETITION

Petitioner has not filed a Petition for writ of habeas corpus in this action. Therefore, unless Petitioner is a capital prisoner, he has not initiated habeas proceedings in this Court. Calderon (Nicolaus) v. United States District Court, 98 F.3d 1102, 1107 n. 3 (9th Cir. 1996) (“Unlike non-capital prisoner who initiate habeas proceedings by filing a petition for a writ of habeas corpus, capital prisoners commence federal habeas proceedings by filing a request for appointment of counsel.”); McFarland v. Scott, 512 U.S. 849 (1994).

//

1 Petitioner does not contend that he is a capital prisoner, that is, a prisoner under sentence
2 of death, and there is nothing in the documents he has submitted which indicates that he is a
3 capital prisoner. If Petitioner wishes to proceed with a habeas action in this Court he must (as
4 is the case with all non-capital prisoners) file a petition for writ of habeas corpus, which will be
5 given a separate civil case number. However, if Petitioner is in fact a capital prisoner, he may
6 request the Court to re-open this action in order to permit him to file a Petition under the civil
7 case number assigned to this action.

8 Further, the Court cautions Petitioner that a one-year period of limitation applies to a
9 petition for a writ of habeas corpus by a person in custody pursuant to the judgment of a State
10 court. The limitation period begins to run on the latest of:

11 (A) the date on which the judgment became final by the
12 conclusion of direct review or the expiration of the time for seeking
such review;

13 (B) the date on which the impediment to filing an application
14 created by State action in violation of the Constitution or laws of the
United States is removed, if the applicant was prevented from filing
by such State action;

15 (C) the date on which the constitutional right asserted was
16 initially recognized by the Supreme Court, if the right has been
newly recognized by the Supreme Court and made retroactively
17 applicable to cases on collateral review; or

18 (D) the date on which the factual predicate of the claim or
19 claims presented could have been discovered through the exercise
of due diligence.

20 28 U.S.C.A. § 2244(d)(1)(A)-(D) (West 2006). If the federal petition is filed after the statute
21 of limitations has run, the petition will be summarily dismissed.

22 The statute of limitations does not run while a properly filed state habeas corpus petition
23 is pending. 28 U.S.C. § 2244(d)(2); see Nino v. Galaza, 183 F.3d 1003, 1006 (9th Cir. 1999).
24 But see Artuz v. Bennett, 531 U.S. 4, 8 (2000) (holding that “an application is ‘properly filed’
25 when its delivery and acceptance [by the appropriate court officer for placement into the record]
26 are in compliance with the applicable laws and rules governing filings.”). However, the filing
27 of a federal habeas petition does not toll the statute of limitations. Duncan v. Walker, 533 U.S.
28 167, 181-82 (2001).

1 CONCLUSION AND ORDER

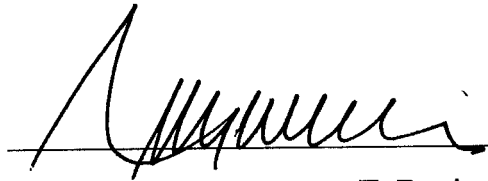
2 This action is **DISMISSED** without prejudice because Petitioner has not filed a Petition
3 and has therefore failed to initiate federal habeas proceedings in this action. Accordingly, the
4 request for extension of time is **DENIED** as moot. If Petitioner is a capital prisoner he may
5 request to have this case reopened. *The Clerk of Court shall send Petitioner a blank Southern*
6 *District of California habeas petition form and blank in forma pauperis application along with*
7 *a copy of this Order.*

8 The Clerk shall close the file.

9 **IT IS SO ORDERED.**

10 DATED: _____

11 *4/21/2020*

12 

13 Roger T. Benitez
14 United States District Judge
15
16
17
18
19
20
21
22
23
24
25
26
27
28