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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

RONNIE JONES,

vs.

L.S. McEWEN, et al.,

Plaintiff,

Defendants.

CASE NO. 12cv1777-LAB (BGS)

**ORDER DENYING MOTION FOR  
RECONSIDERATION**

On August 16, 2013, after Petitioner Ronnie Jones failed to object to the report and recommendation (“R&R”) which recommended denying his petition for writ of habeas corpus, the Court adopted the R&R and denied the petition.

The Court’s order denying the petition agreed with the R&R that Jones’ petition was time-barred under AEDPA by over a year and he had made no adequate showing of entitlement to tolling. The order then went on to explain why, even if the Court had reached the merits, his claim would fail.

Jones has now submitted for filing a document he calls his objections to the R&R, along with a letter to the court clerk. The letter claims Jones in fact mailed his objections to the R&R, and says he is enclosing the “mailroom legal status CDC 119 which show[s] the date of mailing.” No such document is enclosed.

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1           The Court accepted Jones' objections as a motion for reconsideration pursuant to  
2 Fed. R. Civ. P. 59 or 60. This pleading does not, for the most part, address the R&R or  
3 anything in it. Instead, Jones argues that the Court does not realize that he is being assisted  
4 by a fellow inmate, serving as a "jailhouse lawyer," and that he is not truly proceeding *pro se*.  
5 The signature of his fellow inmate is on his objections. Jones argues that because he is not  
6 a lawyer, he has been unable to prepare or file his petition or any filings throughout either  
7 state or federal proceedings.

8           Federal habeas petitioners have no right to counsel, see *Penn. v. Finley*, 481 U.S.  
9 551, 555–57 (1987) (no right to counsel on federal habeas review), and courts know that  
10 many, if not most petitioners have no legal training or counsel. See *Jihad v. Hvass*, 267 F.3d  
11 803, 806–07 (8<sup>th</sup> Cir. 2001). This Court and other courts set deadlines with this in mind, and  
12 Congress in enacting AEDPA is presumed to have considered these equities when it  
13 imposed the one-year limitations period. See *id.*

14           The Court is also aware that inmates commonly rely on jailhouse lawyers. But at the  
15 same time, the petition is Jones's, not the jailhouse lawyer's, and Jones is the one  
16 responsible for what it says and for seeing that pleadings are submitted on time. The fact  
17 that Jones is being assisted by a jailhouse lawyer instead of not being assisted at all does  
18 not entitle him to tolling under AEDPA, nor does it excuse his failure to file objections or  
19 other pleadings when told by the Court to do so. If anything, reliance on a jailhouse lawyer  
20 should make it easier for him to file documents. Jones does not identify any errors his  
21 jailhouse lawyer made, or any other way he might have been delayed or harmed by reliance  
22 on his jailhouse lawyer's advice. But even if he had, that would not entitle him to tolling. See  
23 *Chaffer v. Prosper*, 592 F.3d 1046, 1049 (9<sup>th</sup> Cir. 2010) (reliance on another inmate to  
24 prepare and file a habeas petition does not warrant equitable tolling). See also *Ford v. Pliier*,  
25 590 F.3d 782, 789 (9<sup>th</sup> Cir. 2009) (petitioner's ignorance of or confusion about the law would  
26 not entitle him to tolling).

27           The sole objection Jones now seeks to make to the R&R is that he is a mental patient  
28 who is incapable of representing himself, and that this shows good cause for tolling AEDPA's

1 limitations period. (Mot. for Recons., 2–3.) He also says he suffers from “mental disorder  
2 defects.” (*Id.* at 3.) The R&R addressed all these points.

3         The R&R liberally construed Jones’s mentions of mental orders or defects in his state  
4 habeas petitions as a request for equitable tolling. (R&R, 8:19–9:15.) In support of those  
5 petitions, he submitted documents showing he suffered from hypertension and periodic  
6 depression, and needed substance abuse treatment. (*Id.*, 9:3–7.) He also provided a  
7 probation officer’s report showing he had an extensive drug and chemical history, and had  
8 been diagnosed with attention deficit disorder and hypertension. (*Id.*, 9:7-9.) The time frame  
9 of these is not completely clear; the Court of Appeal merely noted they referred to post-  
10 conviction documents. (Lodgment 89, 3:23–25.) That court did, however, find that the  
11 documents he submitted did not amount to “objective documentation or evidence to support  
12 his contentions,” and that the documents “do not suggest any underlying conditions or  
13 psychological defects” relevant to a claim that his jury waiver was involuntary. (*Id.* at  
14 3:22–26.)

15         To show entitlement to holding based on a mental impairment, the condition must be  
16 so severe that it causes the petitioner to fail to meet filing deadlines despite his diligence.  
17 See *Stancl v. Clay*, 692 F.3d 948, 951 (9<sup>th</sup> Cir. 2012); *Bills v. Clark*, 628 F.3d 1092, 1097,  
18 1100 (9<sup>th</sup> Cir. 2010). To merit further factual development, Jones would at least have had to  
19 make good-faith allegations that, if true, would entitle him to equitable tolling. See *Laws v.*  
20 *Lamarque*, 351 F.3d 919, 921 (9<sup>th</sup> Cir. 2003). A bare allegation of mental defect or disorder,  
21 without more, would not show this. In addition, the Court is required to accept the state  
22 courts’ adjudication of facts unless rebutted by clear and convincing evidence. See 28  
23 U.S.C. § 2254(e). The Court therefore accepts the Court of Appeal’s determination that  
24 Jones had no serious long-term impairment that affected him at the time of his conviction.

25         Jones never explained the lateness of his petitions to the state courts or gave them  
26 a reasonable opportunity to determine whether he had a good excuse for the large gaps  
27 between rounds of collateral review. His mental defect claims were offered in support of his  
28 argument that his jury waiver was less than knowing and intelligent, and he never offered

1 any evidence or explanation in an effort to show those limitations prevented him from timely  
2 filing his petitions. This court’s factual review is limited to the record there. See *Bell v. Uribe*,  
3 \_\_\_ F.3d \_\_\_, 2013 WL 4750069, slip op. at \*1 n.1 (9<sup>th</sup> Cir. 2013) (“Federal habeas review ‘is  
4 limited to the record that was before the state court that adjudicated the claim on the  
5 merits.’”) (quoting *Cullen v. Pinholster*, 131 S.Ct. 1388, 1398 (2011)).

6 Under *Bills*, the question is whether Jones, despite his diligence, was mentally unable  
7 to do what AEDPA required, “i.e., understand the need to file within the limitations period,  
8 and submit a minimally adequate habeas petition.” 628 F.3d at 1100. Here, the record  
9 shows Jones pursued his claims through state habeas review. He now attests, under penalty  
10 of perjury, that he was assisted in this process by a jailhouse lawyer. (Mot. for Recons., 1–2.)  
11 This is not helpful to his cause, however, because the availability of assistance mitigates his  
12 own mental limitations. See *Stancle*, 692 F.3d at 959 (where petitioner was able to pursue  
13 relief in state court with the assistance of a jailhouse lawyer, his own mental impairment did  
14 not make it impossible for him to meet filing deadlines). See also *Bills*, 628 F.3d at 1100  
15 (explaining that tolling analysis considers “the totality of the circumstances, including  
16 reasonably available access to assistance”). Even if the Court were to receive and consider  
17 new evidence of mental impairment, the fact that Jones was assisted in his state court filings  
18 removes his own mental limitations, whatever those might have been at the time, as an  
19 explanation for the large gaps between rounds of state habeas review.

20 As for his failure to object to the R&R, Jones was clearly able to file pleadings in this  
21 case on time, and has done so. He was also able, repeatedly, to request extensions of time,  
22 which were granted. His motions for extensions of time, and his motion for appointment of  
23 counsel did not mention mental impairments. Rather, he pointed to several other reasons  
24 to support his requests. (See Docket nos. 13 (request for extension of time to oppose motion  
25 to dismiss, identifying status as a *pro se* prisoner as the reason); 16 (motion for appointment  
26 of counsel, identifying indigence as the reason); 21 (request for extension of time to oppose

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1 motion to dismiss,<sup>1</sup> identifying lockdown, lack of law library access, and change of address  
2 as the reasons.)

3 Finally, as explained in the Court's order adopting the R&R and denying the petition,  
4 Jones's claim would fail on the merits. His sole claim is that his trial counsel didn't  
5 adequately advise him about the drawbacks of waiving jury and opting for a bench trial. Even  
6 supposing his counsel was deficient in this respect, there was never any showing of  
7 prejudice. *See Strickland v. Washington*, 466 U.S. 668, 692 (1984) (holding that any  
8 deficiencies in counsel's performance must be prejudicial in order to amount to ineffective  
9 assistance of counsel under the Constitution). Finding Jones's claim meritorious would  
10 require setting aside several factual layers of findings by the state courts, and the high  
11 standard for doing so is far from met here. *See Miller-El v. Cockrell*, 537 U.S. 322, 340  
12 (2003) (citing § 2254(e)(10 and (d)(2)).

13 The Court will, however, take the opportunity to clarify its order denying the petition.  
14 That order said his petition was time-barred by 458 days and he was only entitled to statutory  
15 tolling for 69 of those days. A clearer explanation is this: 254 days after his conviction  
16 became final, Jones filed his petition in the California Superior Court. After that was denied,  
17 an unexplained gap of 117 days followed before he filed his petition in the California Court  
18 of Appeal. During this time, AEDPA's one-year limitations period expired, and Jones is not  
19 entitled to statutory tolling for an unexplained gap of that magnitude. (See R&R, 7:7–24.)  
20 Because the petition in the Court of Appeal was not properly filed, the R&R determined he  
21 was not entitled to tolling for that period. (R&R, 8:1–3.) His petition was under consideration  
22 by that court for 45 days. After that petition was denied, he waited another 135 days, which  
23 he did not explain, before filing his petition in the California Supreme Court. He is not entitled  
24 to gap tolling for that period, either. His petition was under consideration by the California  
25 Supreme Court for 116 days before being denied without comment. He then waited 27 days  
26 before filing his petition in this Court.

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28 <sup>1</sup> Because Jones had already opposed the motion to dismiss and the R&R had been issued, the Court construed this as a request to extend time to object to the R&R.

