

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

4 28 U.S.C.A. § 2244(d)(1)(A)-(D).

5 The statute of limitations does not run while a properly filed state habeas corpus
6 petition is pending. 28 U.S.C. § 2244(d)(2); see Roy v. Lampert, 465 F.3d 964, 968
7 (9th Cir. 2006). But see Artuz v. Bennett, 531 U.S. 4, 8 (2000) (holding that “an
8 application is ‘properly filed’ when its delivery and acceptance [by the appropriate
9 court officer for placement into the record] are in compliance with the applicable laws
10 and rules governing filings.”). However, absent some other basis for tolling, the statute
11 of limitations does run while a federal habeas petition is pending. Duncan v. Walker,
12 533 U.S. 167, 181-82 (2001).

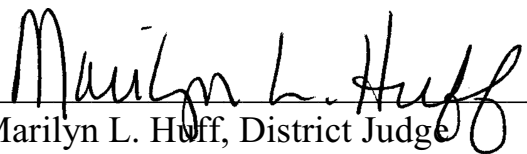
13 Petitioner has not filed a Petition for writ of habeas corpus in this action,
14 therefore, he has not initiated habeas proceedings in this Court. Isley v. Arizona Dep't
15 of Corr., 383 F.3d 1054, 1056 (9th Cir. 2004) (citing Woodford v. Garceau, 538 U.S.
16 202, 208-10 (2003)) (“[A] habeas proceeding is ‘pending’ only after the petitioner has
17 placed before the court an actual request for relief from the judgment of conviction.”).

18 **CONCLUSION**

19 For the foregoing reasons, the Court denies Petitioner’s request to toll the statute
20 of limitations without prejudice. The Court directs the Clerk to close the case.

21 **IT IS SO ORDERED.**

22 DATED: January 2, 2014

23 
24 Marilyn L. Huff, District Judge
25 UNITED STATES DISTRICT COURT
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