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

GARY LEE BJORSTROM,
Petitioner,
v.
SCOTT KERNAN, Secretary of the
California Department of Corrections
and Rehabilitation,
Respondent.

Case No.: 16cv151-MMA (WVG)

**ORDER ADOPTING REPORT AND
RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE;**

[Doc. No. 18]

**GRANTING RESPONDENT’S
MOTION TO DISMISS FIRST
AMENDED PETITION FOR WRIT OF
HABEAS CORPUS;**

[Doc. No. 12]

**DENYING AS MOOT PETITIONER’S
MOTION TO APPOINT COUNSEL;**

[Doc. No. 20]

**DECLINING TO ISSUE
CERTIFICATE OF APPEALABILITY**

Petitioner Gary Lee Bjorstrom, proceeding *pro se*, has filed a First Amended
Petition for writ of habeas corpus (“petition”) pursuant to Title 28, United States Code,

1 section 2254. *See* Doc. No. 3. Respondent Scott Kernan, Secretary of the California
2 Department of Corrections and Rehabilitation, moves to dismiss the petition as untimely
3 under the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), which
4 imposes a one year statute of limitations period to file a federal habeas petition. *See* Doc.
5 No. 7. The Court referred the matter to United States Magistrate Judge William V. Gallo
6 for preparation of a Report and Recommendation pursuant to Title 28, section 636(b)(1),
7 and Civil Local Rule HC.2. Judge Gallo issued a well-reasoned and thorough report
8 recommending, *inter alia*, that the Court grant Respondent’s motion and dismiss the
9 petition as untimely. *See* Doc. No. 12. Petitioner filed objections to the Report and
10 Recommendation, contemporaneously with a motion to appoint counsel. *See* Doc. Nos.
11 20, 21. Respondent filed supplemental briefing in response to Petitioner’s motion to
12 appoint counsel. *See* Doc. No. 24.

13 DISCUSSION

14 *1. Standard of Review*

15 Pursuant to Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. §
16 636(b)(1), the Court must “make a *de novo* determination of those portions of the report .
17 . . . to which objection is made,” and “may accept, reject, or modify, in whole or in part,
18 the findings or recommendations made by the magistrate [judge].” 28 U.S.C. §
19 636(b)(1); *see also United States v. Remsing*, 874 F.2d 614, 617 (9th Cir. 1989).

20 *2. Analysis*

21 Petitioner objects to the recommendation that his petition be dismissed as untimely
22 under AEDPA on three grounds. First, Petitioner contends that his post-conviction
23 filings in state court tolled the statutory time for filing his petition in federal court.
24 However, Judge Gallo correctly concluded that Petitioner’s state court submissions were
25 not “properly filed” applications for collateral relief under Section 2244(d)(2). *Maes v.*
26 *Chavez*, 792 F.3d 1132, 1134 (9th Cir. 2015).

27 Petitioner also raises two grounds for equitable relief from the statute of
28 limitations. Petitioner asserts that he was unaware of the applicable one-year statute of

1 limitations. However, a *pro se* petitioner’s confusion or “ignorance of the law” is not an
2 “extraordinary circumstance warranting equitable tolling.” *Rasberry v. Garcia*, 448 F.3d
3 1150, 1154 (9th Cir. 2006).

4 In addition, Petitioner argues that insufficient access to legal resources hindered his
5 ability to timely file a federal petition. Petitioner has complained repeatedly regarding
6 the lack of a law library at his current place of incarceration, East Mesa Detention
7 Facility, and the inadequacy of the legal research materials otherwise available.
8 However, limitations on law library access and research materials are considered to be
9 normal conditions of incarceration, and generally do not entitle a petitioner to equitable
10 relief. *Chaffer v. Prosper*, 592 F.3d 1046, 1049 (9th Cir. 2010). Furthermore, Petitioner
11 did not arrive at the East Mesa facility until several weeks subsequent to the expiration of
12 the AEDPA deadline. As such, any alleged inadequacy in the legal resources available at
13 East Mesa could not have caused him to miss the filing deadline.

14 Petitioner further contends that he attempted unsuccessfully to obtain a federal
15 habeas form prior to the expiration of the statute of limitations. According to Petitioner,
16 he ultimately had to request the form directly from the Clerk of Court, and did not receive
17 the form until after the deadline for filing his federal petition. While a state must provide
18 a law library or legal assistance during the pleading stage of a habeas action, *Cornett v.*
19 *Donovan*, 51 F.3d 894, 898 (9th Cir. 1995), Petitioner fails to establish that the lack of a
20 pre-printed federal habeas form resulted in the complete inability to assert his claims.
21 Equitable tolling is available to excuse an untimely petition only when “extraordinary
22 circumstances beyond a prisoner’s control make it *impossible* to file a petition on time
23 and the extraordinary circumstances were the cause of [the prisoner’s] untimeliness.”
24 *Bills v. Clark*, 628 F.3d 1092, 1096 (9th Cir. 2010) (emphasis in original) (internal
25 quotations omitted). Petitioner makes no such showing, and the record demonstrates that
26 he clearly had the ability to prepare and file legal papers prior to his transfer to the East
27 Mesa facility.

