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IN THE UNITED STATES DISTRICT COURT

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FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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Jovany Aranda Pegueros,

No. CV-19-02258

10

Plaintiff,

ORDER

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v.

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M. Pollard, Warden, RJDCF; Xavier
Becerra, Attorney General of the State of
California, Additional Respondent,

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Defendants.

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Before the Court is Defendant M. Pollard's ("Pollard") Motion to Dismiss Plaintiff Jovany Aranda Pegueros's ("Pegueros") Petition for Writ of Habeas Corpus. (Doc. 6.) The Court granted Pegueros two extensions of time to file a response, making the deadline to respond September 3, 2020. (Docs. 9, 12.) Pegueros has not filed a response or requested another extension of time. Therefore, the motion is now before the Court.¹

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I. BACKGROUND

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In March 2001, Pegueros was arrested for fleeing from and shooting at two police officers. (Doc. 7-1 at 18-19.) On March 23, the district attorney filed an amended complaint charging Pegueros with two counts of attempted murder of a peace officer and two counts

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¹ Because Magistrate Judge Michael Berg was defense counsel for Pegueros, all District Judges and Magistrate Judges in the Southern District of California were recused from this matter. (Doc. 13.) Pursuant to 28 U.S.C. § 292(b), the case was subsequently assigned to the Honorable Stephen M. McNamee, United States Senior District Judge for the District of Arizona, by Chief Judge of the Ninth Circuit Court of Appeals Sidney R. Thomas, to perform the duties of United States District Judge temporarily for the Southern District of California. (Doc. 15.)

1 of assault with a firearm on a peace officer. (Id. at 9-11.) Each count carried (1) a gun use
2 allegation pursuant to Penal Code 12022.53; and (2) a prior prison term enhancement and
3 a serious or violent felony prior. (Id. at 11-12.)

4 On May 16, 2001, Pegueros pleaded guilty to one count of assault with a firearm
5 upon a police officer, admitted the attendant firearm-discharge enhancement, and admitted
6 that he had sustained a prior serious felony conviction and a prior strike conviction. (Id. at
7 13-15.) In doing so, Pegueros waived his right to appeal issues related to strike priors and
8 any sentence stipulated within the plea. (Id. at 14.) In exchange, the district attorney agreed
9 to a 37-year sentence and dismissal of the remainder of the complaint. (Id. at 13-14.) On
10 June 21, 2001, the Superior Court of California sentenced Pegueros to 37 years in state
11 prison. (Id. at 29.)

12 Thereafter, Pegueros filed two notices of appeal and requests for certificates of
13 probable cause. (Id. at 30-39.) The Superior Court denied the requests for certificates of
14 probable cause on August 10, 2001. (Id. at 40.)

15 On March 14, 2002, Pegueros's appellate counsel filed a brief in accordance with
16 People v. Wende, 25 Cal.3d 436 (1979), and Anders v. California, 386 U.S. 738 (1967),
17 raising no arguments on Pegueros's behalf. (Doc. 7-5.) The California Court of Appeal
18 granted Pegueros permission to file a brief on his own behalf and granted his request for a
19 30-day extension of time to do so. (Doc. 7-6 at 2.) Pegueros did not file a brief. (Id.) On
20 June 11, 2002, the Court of Appeal affirmed the judgment. (Doc. 7-6 at 3.)

21 Then, over 16 years later, on December 13, 2018, Pegueros constructively filed his
22 first petition for writ of habeas corpus in the Superior Court of California. (Doc. 7-7.) In
23 his petition, Pegueros alleged that (1) his trial counsel failed to provide effective assistance;
24 (2) an actual conflict of interest existed with his trial counsel; (3) he was coerced into
25 accepting the plea bargain; (4) he did not waive sentencing by the trial judge and refused
26 to sign an Arbuckle² waiver on the plea form; (5) the district attorney unlawfully threatened
27 to charge his mother with a crime if he did not take the plea bargain; (6) he was forced to

28 ² See People v. Arbuckle, 587 P.2d 220 (Cal. 1978).

1 plead guilty while the district attorney possessed no evidence of specific intent; (7) he
2 attempted to withdraw his plea, however, the trial counsel, district attorney, and trial judge
3 did not allow him to; (8) he was denied effective assistance of appellate counsel; and (9)
4 the district attorney in the underlying matter provided false information to the trial court.
5 (Id. at 1-11.) The Superior Court denied Pegueros's petition as untimely and meritless on
6 January 18, 2019. (Doc. 7-8.)

7 On March 5, 2019, Pegueros constructively filed a petition for writ of habeas corpus
8 in the California Court of Appeal. (Doc. 7-9.) In his petition, Pegueros alleged the same
9 nine claims he alleged in his first petition, as well as two additional claims alleging that the
10 Superior Court erred in denying his petition for writ of habeas corpus and in finding that
11 his petition was untimely due to his ineffective assistance of counsel. (Id. at 3-13.) The
12 Court of Appeal denied Pegueros's petition on March 20, 2019. (Doc. 7-11.)

13 Thereafter, on May 28, 2019, Pegueros constructively filed a petition for writ of
14 habeas corpus in the California Supreme Court, listing the same 11 grounds he argued in
15 the appellate court, as well as an additional twelfth ground stating that the California Court
16 of Appeal erred in denying his petition for writ of habeas corpus. (Doc. 7-12.) The
17 California Supreme Court denied Pegueros's petition as untimely on September 22, 2019.
18 (Doc. 7-13.)

19 Finally, on November 25, 2019, Pegueros constructively filed the instant petition
20 for writ of habeas corpus in federal court, alleging the same 12 claims previously alleged
21 in his last petition, as well as two additional claims. (Doc 1.) In his two additional claims,
22 Pegueros states that the California Supreme Court erred in denying his petition for writ of
23 habeas corpus and that this Court has the discretion to hold an evidentiary hearing to
24 resolve issues of fact in this matter. (Id. at 107, 115.)

25 Pollard now moves to dismiss Pegueros's Petition for Writ of Habeas Corpus with
26 prejudice, arguing the petition is untimely and Pegueros procedurally defaulted his claims.
27 (Doc. 6-1.)

28 **II. ANALYSIS**

1 Pollard argues Pegueros’s petition is barred because it was filed outside of the one-
2 year statute of limitations. (Doc. 6-1 at 9-13.) Under 28 U.S.C. § 2244(d), a petitioner for
3 a writ of habeas corpus who is in state custody has one year from the date his conviction is
4 final to file his petition in federal court. A later date may apply if state action impeded the
5 filing, a new constitutional right was recognized by the Supreme Court, or the factual
6 predicate for the claim could not have been discovered at the time of finality. 28 U.S.C.
7 § 2244(d)(1)(B)-(D). Additionally, the statute of limitations tolls while “a properly filed
8 application for State post-conviction or other collateral review . . . is pending.” 28 U.S.C.
9 § 2244(d)(2).

10 Here, Pegueros’s judgment became final on July 21, 2002, forty days after the
11 California Court of Appeal filed its opinion affirming the judgment. See Cal. R. Ct.
12 8.366(b)(1); 8.500(e)(1); Waldrip v. Hall, 548 F.3d 729, 735 (9th Cir. 2008). Pegueros does
13 not allege state action impeding his filing; his claims are not based on a new rule of
14 constitutional law; nor does his claim rely on a factual predicate that was not discoverable
15 at the time of his judgment. See 28 U.S.C. § 2244 (d)(1)(B)-(D). Therefore, the date of
16 finality cannot be altered.

17 The limitations period also cannot be statutorily tolled. Pegueros did not seek state
18 post-conviction review until 16 years after his judgment became final and 15 years after
19 the statute of limitations had run. (See Doc. 7-7.) A limitations period that has already
20 ended before a state petition is filed cannot be renewed or tolled under § 2244(d)(2).
21 Ferguson v. Palmateer, 321 F.3d 820, 823 (9th Cir. 2003). Therefore, Pegueros’s petition
22 is untimely unless he can show other grounds to avoid the limitations period.

23 Pegueros contends he is entitled to equitable tolling because he was abandoned by
24 trial, appellate, and post-conviction counsel and because he is pro se and uneducated (Doc.
25 1 at 97-99.) The limitations period under § 2244(d) is subject to the doctrine of equitable
26 tolling. Holland v. Florida, 560 U.S. 631, 634 (2010). A petitioner seeking equitable tolling
27 bears the burden of showing “(1) that he has been pursuing his rights diligently, and (2)
28 that some extraordinary circumstance stood in his way’ and prevented timely filing.”

1 Holland, 560 U.S. at 649 (quoting Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005)). To
2 satisfy the first element, a petitioner “must show that he has been reasonably diligent in
3 pursuing his rights not only while an impediment to filing caused by an extraordinary
4 circumstance existed, but before and after as well, up to the time of filing his claim in
5 federal court.” Smith v. Davis, 953 F.3d 582, 598-99 (9th Cir. 2020) (en banc).

6 Pegueros does not meet his burden of proof. Assuming, without finding, that
7 Pegueros was abandoned by counsel and that the abandonment constitutes extraordinary
8 circumstances, Pegueros has failed to show that he acted with reasonable diligence when
9 that impediment did not exist. See Smith, 953 F.3d at 598-99. Pegueros’s judgment was
10 final on July 21, 2002. He provides no evidence that any impediment caused by
11 abandonment of his trial and appellate counsel extended beyond that point. Pegueros then
12 provides documentation to show that he and his mother sought to obtain post-conviction
13 counsel in 2016. (Doc. 7-7 at 151-72.) Pegueros alleges he was abandoned by this counsel
14 as well. (Doc. 1 at 97.) However, Pegueros provides no evidence of diligence for the 14
15 years between the finality of his judgment and his attempt to obtain post-conviction
16 counsel. Therefore, Pegueros has not shown that he acted diligently in pursuing his rights.

17 Similarly, Pegueros’s pro se status, illiteracy, and ignorance of the law do not excuse
18 his 15-year delay in filing his petition. The law is clear that a petitioner’s lack of knowledge
19 or ability does not constitute extraordinary circumstances. See Ford v. Pliler, 590 F.3d 782,
20 789 (9th Cir. 2009); Raspberry v. Garcia, 448 F.3d 1150, 1154 (9th Cir. 2006); see also
21 Baker v. Cal. Dep’t of Corr., 484 F. App’x 130, 131 (9th Cir. 2012); Brown v. Miller, No.
22 EDCV 14-1864 RNB, 2015 WL 269057, at *4 (C.D. Cal. Jan. 21, 2015) (collecting cases).
23 Therefore, equitable tolling is not available to Pegueros.

24 Lastly, Pegueros claims he is entitled to the “actual-innocence” exception to the
25 statute of limitations. (Doc. 1 at 99-100.) In rare and extraordinary cases, a convincing
26 showing of actual innocence may serve to overcome the statute of limitations under
27 § 2244(d). McQuiggin v. Perkins, 569 U.S. 383, 386 (2013). A showing of actual
28 innocence requires “new reliable evidence—whether it be exculpatory scientific evidence,

1 trustworthy eyewitness accounts, or critical physical evidence—that was not presented at
2 trial.” Schlup v. Delo, 513 U.S. 298, 324 (1995). Additionally, the petitioner must persuade
3 the court “that, in light of the new evidence, no juror, acting reasonably, would have voted
4 to find him guilty beyond a reasonable doubt.” Perkins, 569 U.S. at 386 (quoting Schlup,
5 513 U.S. at 329). “[T]he timing of the petition is a factor bearing on the reliability of the
6 evidence purporting to show actual innocence.” Id. at 386-87 (internal quotations and
7 alterations omitted) (quoting Schlup, 513 U.S. at 332).

8 Here, Pegueros pleaded guilty. He admitted in his plea form that he “committed an
9 assault with a firearm on a police officer and intentionally personally discharged the
10 firearm in the commission of the offense.” (Doc. 7-1 at 15.) Then, again, at his plea
11 colloquy, when asked if he “intentionally and personally” discharged the firearm, Pegueros
12 stated he had. (Doc. 7-3 at 5.) Now, Pegueros states that he is innocent because he dropped
13 his gun and it discharged when it was out of his hands. (Doc. 1 at 124.) His only evidence
14 of this is a personal declaration directly contradicting his statements made at the time of
15 his plea. (Id.) This self-serving declaration, filed 17 years after Pegueros pleaded guilty, is
16 insufficient to show that no juror would have found Pegueros guilty beyond a reasonable
17 doubt.³ See Brookins v. Pfeiffer, No. CV 18-4038-FMO (JPR), 2019 WL 926353, at *11
18 (C.D. Cal. Jan. 17, 2019) (petitioner’s self-serving statements are not enough to meet actual
19 innocence standard where petitioner pleaded guilty), report and recommendation adopted,
20 No. CV 18-4038-FMO (JPR), 2019 WL 1014782 (C.D. Cal. Mar. 1, 2019); see also Ponce
21 v. Eldridge, No. 519CV00751DMGMAA, 2019 WL 8501633, at *6 (C.D. Cal. Aug. 19,
22 2019) (petitioner’s own statement insufficient to show trial proceeding convicted innocent
23 person) (collecting cases), report and recommendation adopted, No.
24 EDCV1900751DMGMAA, 2020 WL 1904599 (C.D. Cal. Apr. 16, 2020). Therefore,
25 Pegueros cannot escape the limitations period with a claim of actual innocence. Because
26 Pegueros offers no other grounds for tolling or avoiding the statute of limitations, the Court

27 ³ The Court notes that the Schlup actual-innocence standard “does not readily lend
28 itself to” petitioners who pleaded guilty. Brown v. Miller, No. EDCV 14-1864 RNB, 2015
WL 269057, at *7 (C.D. Cal. Jan. 21, 2015). However, Pegueros’s evidence is so far from
satisfying the Schlup standard, the Court does not attempt to resolve the incongruity here.

1 finds that Pegueros's petition is untimely.

2 Because the Court finds Pegueros's petition is time barred, it does not address
3 Pollard's procedural-default arguments.

4 **III. CONCLUSION**

5 Based on the above, the Court finds that Pegueros's petition for writ of habeas
6 corpus is untimely and shall be dismissed with prejudice.


7 Accordingly,

8 **IT IS HEREBY ORDERED granting** Defendant's Motion to Dismiss Plaintiff
9 Petition for Writ of Habeas Corpus. (Doc. 6.)

10 **IT IS FURTHER ORDED dismissing with prejudice** this matter and **directing**
11 the Clerk to the Court to enter judgment accordingly.

12 Dated this 3rd day of May, 2021.

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Honorable Stephen M. McNamee
Senior United States District Judge