

1 rights diligently, and (2) that some extraordinary circumstance stood in his way' and prevented
2 timely filing.” Holland v. Florida, 560 U.S. 631, 649 (2010) (quoting Pace v. DiGuglielmo, 544
3 U.S. 408, 418 (2005)). The lack of transcripts was not an extraordinary circumstance that
4 prevented timely filing. Petitioner was litigating his issues in state court, and nothing appears to
5 have stopped him from filing a petition based upon his recollection in federal court before the
6 date of actual filing. Instead, he waited almost a year after the end of the last state-court petition
7 before filing his federal petition.¹ Petitioner has not shown the diligence necessary for equitable
8 tolling.

9 Third, petitioner argues that he is actually innocent. More accurately, he has titled a
10 section of his objections as a claim of actual innocence. The section itself contains only
11 arguments of procedural irregularities in the various post-conviction motions that petitioner filed
12 in state court. His arguments are not new evidence that, along with the other evidence, would
13 lead no juror to find him guilty beyond a reasonable doubt. See McQuiggin v. Perkins, 569 U.S.
14 383, 386 (2013).

15 Fourth, petitioner argues that the prosecution sought an enhancement for a first-time
16 offense of stalking, Nev. Rev. Stat. § 200.575. Fifth, petitioner argues that the trial court erred by
17 not ordering petitioner’s trial counsel to provide mitigating evidence at sentencing. Sixth,
18 petitioner argues that the prosecution committed misconduct in charging him. Seventh, petitioner
19 argues that he is not receiving credits toward an earlier parole date. These are questions of the
20 merits, and they have no bearing on the timeliness of the action.

21 Reasonable jurists would not find the court’s conclusion to be debatable or wrong, and the
22 court will not issue a certificate of appealability.

23 Petitioner has filed a request for docket sheet and for subpoenas (ECF No. 13), another,
24 separate request for federal subpoenas (ECF No. 14), and a request for appointment of counsel
25 (ECF No. 15). The court will send petitioner a copy of the docket sheet. The court denies
26 petitioner’s other requests because the court is dismissing this action.

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28 ¹ That time, the time between the finality of his judgment of conviction and the filing of a motion to modify his
sentence, and the time between two state-court motions, make the current action untimely. ECF No. 11, at 3-4.

1 IT THEREFORE IS ORDERED that petitioner's objections (ECF No. 12) are **DENIED**.

2 IT FURTHER IS ORDERED that petitioner's request for docket sheet and for subpoenas
3 (ECF No. 13) is **GRANTED** in part. The clerk of the court shall send petitioner a copy of the
4 docket sheet. In all other respects, the request (ECF No. 13) is **DENIED**.

5 IT FURTHER IS ORDERED that petitioner's request for federal subpoenas (ECF No. 14)
6 is **DENIED**.

7 IT FURTHER IS ORDERED that petitioner's request for appointment of counsel is
8 **DENIED**.

9 IT FURTHER IS ORDERED that this action is **DISMISSED** with prejudice because it is
10 untimely. The clerk of the court shall enter judgment accordingly and close this action.

11 IT FURTHER IS ORDERED that a certificate of appealability will not issue.

12 DATED this 24th day of September, 2018.



13
14 LARRY R. HICKS
15 UNITED STATES DISTRICT JUDGE
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