

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Marcus Allen Jeske v. Edward Borla

Jeske v. Borla · No. 1:25-cv-00994-JLT-SKO (HC) · Decided November 19, 2025

OPINION

Borla

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 MARCUS ALLEN JESKE,) Case No.: 1:25-cv-00994-JLT-SKO (HC)) 12 Petitioner,)

FINDINGS AND RECOMMENDATIONS TO

) GRANT RESPONDENT’S MOTION TO DISMISS

13 v.) [Doc. 15]

14 EDWARD BORLA,)

) [21-DAY OBJECTION PERIOD]

15 Respondent.)) 16) 17 18 Petitioner is a state prisoner proceeding pro se and in forma pauperis with a petition for writ of 19 habeas corpus pursuant to 28 U.S.C. § 2254. 20 Petitioner filed his petition in the United States District Court for the Northern District of 21 California on May 9, 2025.¹ (Doc. 1.) On August 11, 2025, the matter was transferred to the Eastern 22 District and received in this Court. (Doc. 6.) On October 10, 2025, Respondent filed a motion to 23 dismiss the petition as untimely. (Doc. 15.) On October 22, 2025, Petitioner filed a traverse. (Doc. 24 17.) Upon review of the pleadings, the Court finds that the petition violates the statute of limitations. 25 26 1 Although the petition was filed on May 16, 2025, the proof of service was dated May 9, 2025. Pursuant to the 27 mailbox rule, a pro se habeas petition is deemed filed on the date of its submission to prison authorities for mailing, as opposed to the date of its receipt by the court clerk. *Houston v. Lack*, 487 U.S. 266, 276 (1988). 28 Therefore, under the mailbox rule, the Court deems the petition filed on May 9, 2025, the date Petitioner 1 The Court will therefore recommend that Respondent’s motion to dismiss be granted and the petition 2 be dismissed with prejudice.

3 DISCUSSION

4 I. Procedural Grounds for Motion to Dismiss

5 Rule 4 of the Rules Governing Section 2254 Cases allows a district court to dismiss a petition 6 if it “plainly appears from the petition and any attached exhibits that the petitioner is not entitled 7 relief in the district court” Rule 4 of the Rules Governing Section 2254 Cases. 8 The Ninth Circuit has allowed respondents to file a motion to dismiss in lieu of an answer if 9 the

motion attacks the pleadings for failing to exhaust state remedies or being in violation of the state's 10 procedural rules. See, e.g., *O'Bremski v. Maass*, 915 F.2d 418, 420 (9th Cir. 1990) (using Rule 4 to 11 evaluate motion to dismiss petition for failure to exhaust state remedies); *White v. Lewis*, 874 F.2d 12 599, 602-03 (9th Cir. 1989) (using Rule 4 as procedural grounds to review motion to dismiss for state 13 procedural default). Thus, a respondent can file a motion to dismiss after the court orders a response, 14 and the court should use Rule 4 standards to review the motion. 15 In this case, Respondent's motion to dismiss is based on a violation of 28 U.S.C. 2244(d)(1)'s 16 one-year limitations period. Thus, the Court will review Respondent's motion to dismiss pursuant to 17 its authority under Rule 4. 18 II. Limitations Period for Filing Petition for Writ of Habeas Corpus 19 On April 24, 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act of 20 1996 (AEDPA). The AEDPA imposes various requirements on all petitions for writ of habeas corpus 21 filed after the date of its enactment. *Lindh v. Murphy*, 521 U.S. 320 (1997); *Jeffries v. Wood*, 114 22 F.3d 1484, 1499 (9th Cir. 1997) (en banc), cert. denied, 118 S.Ct. 586 (1997). The instant petition 23 was filed on May 9, 2025, and thus, it is subject to the provisions of the AEDPA. 24 The AEDPA imposes a one-year period of limitation on petitioners seeking to file a federal 25 petition for writ of habeas corpus. 28 U.S.C. § 2244(d)(1). In most cases, the limitations period 26 begins running on the date that the petitioner's direct review became final. In this case, the Supreme 27 Court denied Petitioner's petition for review on July 14, 2021. (Doc. 14-4.) Therefore, direct review 28 concluded 150 days later on December 11, 2021. Supreme Court Order List 589 and 594. The statute 1 of limitations commenced on the following day, December 12, 2021, and expired one year later on

2 December 11, 2022. *Patterson v. Stewart*, 251 F.3d 1243, 1246 (9th Cir. 2001). Absent applicable

3 tolling, the last day to file a federal habeas petition was December 11, 2022. Here, Petitioner did not 4 file his federal petition until May 9, 2025, which was approximately 2 years and 5 months beyond the 5 deadline. 6 A. Statutory Tolling of the Limitation Period Pursuant to 28 U.S.C. § 2244(d)(2) 7 Under the AEDPA, the statute of limitations is tolled during the time that a properly filed 8 application for state post-conviction or other collateral review is pending in state court. 28 U.S.C. § 9 2244(d)(2). A properly filed application is one that complies with the applicable laws and rules 10 governing filings, including the form of the application and time limitations. *Artuz v. Bennett*, 531 11 U.S. 4, 8 (2000). An application is pending during the time that 'a California petitioner completes a 12 full round of [state] collateral review,' so long as there is no unreasonable delay in the intervals 13 between a lower court decision and the filing of a petition in a higher court. *Delhomme v. Ramirez*, 14 340 F. 3d 817, 819 (9th Cir. 2003), abrogated on other grounds as recognized by *Waldrip v. Hall*, 548 15 F. 3d 729 (9th Cir. 2008) (per curiam); see *Evans v. Chavis*, 546 U.S. 189, 193-194 (2006); *Carey v. 16 Saffold*, 536 U.S. 214, 220, 222-226 (2002); *Nino v. Galaza*, 183 F.3d 1003, 1006 (9th Cir. 1999). 17 In this case, Petitioner filed 2 five collateral petitions in the state courts as follows: 18 First Petition Tulare County Superior Court;

19 Filed: January 15, 2023; Denied: April 25, 2023; 20 Second Petition 21 California Court of Appeals, Fifth Appellate District; Filed: May 9, 2023; 22 Denied: August 25, 2023; 23 Third Petition Tulare County Superior Court; 24 Filed: October 31, 2024; Denied: November 26, 2024; 25 Fourth Petition 26 California Court of Appeals, Fifth Appellate District; Filed: February 2, 2025; 27 Denied: February 19, 2025; 28 2 1 Fifth Petition 2 California Supreme Court; Filed: March 1, 2025; 3 Denied: April 16, 2025. 4 (Docs. 14-5 to 14-14.) 5 Petitioner's first petition was not filed until after the limitations period had already expired. 6 Therefore, the petitions could not operate to toll the limitations period. See *Jiminez v. Rice*, 276 F.3d 7 478, 482 (9th Cir. 2001) (petition filed "after the AEDPA statute of limitations ended" did not save 8 federal petition from being untimely). Therefore, all five petitions had no tolling consequences, and 9 the federal petition remains untimely. 10 B. Equitable Tolling 11 Beyond statutory tolling, federal habeas petitioners may also be entitled to equitable tolling of 12 the statute of limitations. *Holland v. Florida*, 560 U.S. 631, 645 (2010) (holding that "§ 2244(d) is 13 subject to equitable tolling in appropriate cases"); *Ford v. Gonzalez*, 683 F.3d 1230, 1237 (9th Cir.), 14 cert. denied, 133 S.Ct. 769 (2012). "[A] petitioner is entitled to equitable tolling only if he shows (1) 15 that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in 16 his way and prevented timely filing." *Ford*, 683 F.3d at 1237 (quoting *Holland*, 560 U.S. at 649) 17 (internal quotation marks omitted). 18 Petitioner fails to show an extraordinary circumstance stood in his way and he has been 19 pursuing his rights diligently. He should not be granted equitable tolling. See *Pace v. DiGuglielmo*, 20 544 U.S. 408, 418 (2005).

21 RECOMMENDATION

22 For the foregoing reasons, the Court HEREBY RECOMMENDS that Respondent's motion to 23 dismiss be GRANTED and the habeas corpus petition be DISMISSED WITH PREJUDICE for 24 Petitioner's failure to comply with 28 U.S.C. § 2244(d)'s one-year limitations period. 25 This Findings and Recommendation is submitted to the United States District Court Judge 26 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local 27 Rules of Practice for the United States District Court, Eastern District of California. Within twenty- 28 one (21) days after being served with a copy of this Findings and Recommendation, a party may file 1 written objections with the Court and serve a copy on all parties. *Id.* The document should be 2 captioned, "Objections to Magistrate Judge's Findings and Recommendation" and shall not exceed 3 fifteen (15) pages, except by leave of court with good cause shown. The Court will not consider 4 exhibits attached to the Objections. To the extent a party wishes to refer to any exhibit(s), the party 5 should reference the exhibit in the record by its CM/ECF document and page number, when possible, 6 or otherwise reference the exhibit with specificity. Any pages filed in excess of the fifteen (15) page 7 limitation may be disregarded by the District Judge when reviewing these Findings and 8 Recommendations pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file 9 objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v. 10 Wheeler*, 772 F.3d 834, 838-39 (9th

Cir. 2014). This recommendation is not an order that is 11 immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 12 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the District Court's 13 judgment. 14 15 IT IS SO ORDERED. 16 Dated: November 18, 2025 /s/ Sheila K. Oberto .

17 UNITED STATES MAGISTRATE JUDGE

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