

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Aluizo v. Gamboa

Aluizo · No. 1:25-cv-00513-CDB (HC) · Decided June 13, 2025

SUMMARY

The United States District Court for the Eastern District of California recommends dismissing Carlos Santana Aluizo’s 28 U.S.C. § 2254 habeas petition with prejudice as untimely under AEDPA. The court concludes that the limitations period expired before the petition was filed, that a later state habeas filing did not revive or toll the period, and that neither delayed commencement nor equitable tolling applies.

OPINION

(HC) Aluizo v. Gamboa

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 CARLOS SANTANA ALUIZO Case No. 1:25-cv-00513-CDB (HC) 12 Petitioner,
FINDINGS AND RECOMMENDATIONS

TO DISMISS ACTION WITH PREJUDICE

13 v. AS TIME-BARRED

14 MARTIN GAMBOA, Warden (Doc. 1)

15 Respondent. 14-Day Deadline

16 Clerk of the Court to Assign District Judge 17 18 Petitioner Carlos Santana Aluizo (“Petitioner”) is a state prisoner proceeding pro se with a 19 petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. 1, “Petition”). Petitioner 20 challenges his 2021 convictions in the Merced County Superior Court for violations of California 21 Penal Code §§ 288.7(b) and 288(a). (Id. at 1). 22 Because it appears the Petition is untimely, on May 7, 2025, the Court issued an order to 23 show cause affording Petitioner an opportunity to explain why the Court should not dismiss the 24 Petition. (Doc. 4). Petitioner was granted 30 days within which to respond to the Court’s order to 25 show cause; however, more than 30 days (including three additional days pursuant to Fed. R. Civ. 26 P.6(d)) have passed and Petitioner has failed to respond to the Court’s order. Accordingly, the 27 undersigned will recommend that the action be dismissed with prejudice as time barred.1 1 Preliminary Screening

2 Rule 4 of the Rules Governing § 2254 Cases requires the Court to conduct a preliminary

3 review of each petition for writ of habeas corpus. Pro se habeas corpus petitions are to be 4
liberally construed. *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972). However, the Court must 5
dismiss a petition “[i]f it plainly appears from the petition ... that the petitioner is not entitled to 6
relief.” Habeas Rule 4; see *Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019); *Boyd v.* 7
Thompson, 147 F.3d 1124, 1127 (9th Cir. 1988). In conducting this initial review, the Court may 8
sua sponte raise the timeliness of the petition but should only dismiss after allowing the petitioner 9
adequate notice and an opportunity to respond. *Day v. McDonough*, 547 U.S. 198, 210 (2006) 10
(holding that “district courts are permitted, but not obliged, to consider, sua sponte, the 11
timeliness of a state prisoner’s habeas petition” but “before acting on its own initiative, ... must 12
accord the parties fair notice and an opportunity to present their positions”). 13 Discussion 14
Under the Antiterrorism and Effective Death Penalty Act (“AEDPA”), a one-year statute 15 of
limitations applies to petitions seeking habeas relief under § 2254. 28 U.S.C. § 2244(d)(1). 16
Generally, the one-year clock starts to run on “the date on which the judgment became final by 17
the conclusion of direct review or the expiration of the time for seeking such review.” 42 U.S.C. 18
§ 2244(d)(1)(A). Statutory tolling applies to the “time during which a properly filed application 19
for State post-conviction or other collateral review with respect to the pertinent judgment or 20
claim is pending.” 42 U.S.C. § 2244(d)(2). In limited circumstances, a petitioner is entitled to 21
delayed commencement of the limitations period. 42 U.S.C. § 2244(d)(1)(B)-(D). Additionally, 22
equitable tolling may be granted to a petitioner under limited circumstances if he shows that (1) 23
he has been pursuing his rights diligently, and (2) some extraordinary circumstance stood in his 24
way and prevented timely filing. *Holland v. Florida*, 560 U.S. 631, 649 (2010). 25 Here,
Petitioner filed his federal habeas petition on April 27, 2025.² (Doc. 1 at 15). 26 27 2 The Court
applies the mailbox rule and deems the Petition filed on the date Petitioner delivered it to the 1
Petitioner indicates his conviction was affirmed on direct appeal in “2022”³ and the California 2
Supreme Court declined review on November 16, 2022. (*Id.* at 2-3). Thus, Petitioner’s 3
conviction became final on February 14, 2023, when his deadline to seek certiorari from the 4
United States Supreme Court expired. *Bowen v. Roe*, 188 F.3d 1157, 1159 (9th Cir. 1999). The 5
one-year statute of limitations to file a federal petition began to run the next day. *Patterson v.* 6
Stewart, 251 F.3d 1243, 1246 (9th Cir. 2001). The only subsequent state collateral motion 7
Petitioner identified was filed on March 19, 2025. (Doc. 1 at 3). However, state habeas petitions 8
filed after the one-year statute of limitations expired do not revive the statute of limitations and 9
have no tolling effect. See *Larsen v. Soto*, 742 F.3d 1083, 1088 (9th Cir. 2013) (state petition 10
filed over one year after conviction became final did not render subsequent federal petition 11
timely). 12 Petitioner fails to plead facts demonstrating he is entitled to the delayed triggering
events 13 in § 2244(d)(1)(B)-(D) or equitable tolling. Moreover, although Petitioner was afforded
an 14 opportunity by the Court’s show cause order to explain how his petition complies with §
2244(d) 15 or why equitable tolling should apply (see Doc. 4), Petitioner did not respond to the
Court’s order. 16 The undersigned has considered the *Holland* factors in light of the record and is

unable to 17 conclude either that Petitioner has been pursuing his rights diligently or that some extraordinary 18 circumstance stood in his way and prevented a timely filing. Cf. *Spitsyn v. Moore*, 345 F.3d 796, 19 799 (9th Cir. 2003) (reiterating that a habeas petitioner bears a “very high” burden to trigger the 20 “extraordinary exclusion” of equitable tolling). Thus, because in this case the statute of 21 limitations expired no later than February 16, 2024, and equitable tolling does not apply, the 22 Petition should be dismissed with prejudice as untimely. 23 Findings and Recommendation 24 Accordingly, it is HEREBY RECOMMENDED that this action be DISMISSED WITH 25 PREJUDICE as time-barred. 26 These Findings and Recommendations will be submitted to the United States District 27 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days 1 | after being served with a copy of these Findings and Recommendations, a party may file written 2 | objections with the Court. Local Rule 304(b). The document should be captioned, “Objections to 3 | Magistrate Judge’s Findings and Recommendations” and shall not exceed 15 pages without leave 4 | of Court and good cause shown. The Court will not consider exhibits attached to the Objections, 5 | but a party may refer to exhibits in the record by CM/ECF document and page number. Any 6 | pages filed in excess of the 15-page limitation may be disregarded by the District Judge when 7 | reviewing these Findings and Recommendations under 28 U.S.C. § 636(b)(1)(C). A party’s 8 | failure to file any objections within the specified time may result in the waiver of certain rights on 9 | appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014). 10 | IT IS SO ORDERED. | pated: _June 13, 2025 |
Wr by

12 UNITED STATES MAGISTRATE JUDGE

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