

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Sholes v. Andes

Sholes v. Andes · No. 1:24-cv-01098-JLT-CDB (HC) · Decided August 26, 2025

OPINION

(HC) Sholes v. Andes

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 TYRONE ANTHONY SHOLES, Case No. 1:24-cv-01098-JLT-CDB (HC) 12 Petitioner,

FINDINGS AND RECOMMENDATIONS

TO DISMISS PETITION FOR WRIT OF

13 v. HABEAS CORPUS AS UNTIMELY AND

FOR PETITIONER’S FAILURE TO

14 CHANCE ANDES, Warden PROSECUTE AND TO OBEY COURT

ORDERS

15 Respondent.

14-DAY DEADLINE

16 (Doc. 1) 17 18 19 Petitioner Tyrone Anthony Sholes (“Petitioner”) is a state prisoner
proceeding pro se with 20 a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc.
1, “Petition”). For the 21 reasons set forth below, the undersigned recommends the district court
dismiss this action for 22 Petitioner’s failure to prosecute and to obey court orders and/or because
the petition is untimely. 23 Background 24 Petitioner filed his habeas petition on August 23, 2024,
challenging his 2014 convictions 25 in the Tulare County Superior Court. (Doc. 1 at 1). Pursuant
to Rule 4 of the Rules Governing § 26 2254 Cases, the undersigned conducted a preliminary
screening of the petition and determined it 27 was untimely. (Doc. 9). Accordingly, on July 25,
2025, the undersigned ordered Petitioner to show cause why the petition should not be dismissed.
(Id. at 3). The undersigned cautioned that 1 “[a]ny failure to timely comply with this Order may
result in a recommendation that the Petition 2 be dismissed.” (Id.). Petitioner did not file a
response to the order to show cause, and the 3 deadline to do so has expired. 4 Failure to
Prosecute and to Obey Court Orders 5 Local Rule 110, corresponding with Federal Rule of Civil
Procedure 11, provides that 6 “[f]ailure of counsel or of a party to comply with these Rules or with
any order of the Court may 7 be grounds for imposition by the Court of any and all sanctions . . .
within the inherent power of 8 the Court.” E.D. Cal. Local Rule 110. The Court has the inherent

power to control its docket and 9 may, in the exercise of that power, impose sanctions where appropriate, including dismissal of the 10 action. *Bautista v. Los Angeles Cnty.*, 216 F.3d 837, 841 (9th Cir. 2000). A court may dismiss an 11 action based on a party's failure to prosecute an action, obey a court order, or comply with local 12 rules. See, e.g., *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure 13 to comply with a court order to amend a complaint); *Malone v. U.S. Postal Service*, 833 F.2d 128, 14 130-31 (9th Cir. 1987) (dismissal for failure to comply with a court order); *Henderson v. Duncan*, 15 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and to comply with local 16 rules). 17 "In determining whether to dismiss an action for lack of prosecution, the district court is 18 required to weigh several factors: (1) the public's interest in expeditious resolution of litigation; 19 (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public 20 policy favoring disposition of cases on their merits; and (5) the availability of less drastic 21 sanctions." *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (internal quotation marks & 22 citation omitted). These factors guide a court in deciding what to do and are not conditions that 23 must be met in order for a court to take action. In *re Phenylpropanolamine (PPA) Products 24 Liability Litigation*, 460 F.3d 1217, 1226 (9th Cir. 2006) (citation omitted). 25 Similarly, Federal Rule of Civil Procedure 41(b) allows the Court to dismiss an action if 26 the petitioner fails to comply with a court order. Fed. R. Civ. P. 41(b). "By its plain text, a Rule 27 41(b) dismissal . . . requires a court order with which an offending [petitioner] failed to comply." 1 marks, citation, and footnote omitted). The Court must analyze five factors before dismissing a 2 case pursuant to Rule 41(b): "(1) the public's interest in expeditious resolution of litigation; (2) 3 the court's need to manage its docket; (3) the risk of prejudice to the [respondents]; (4) the public 4 policy favoring disposition of cases on their merits; and (5) the availability of less drastic 5 alternatives." *Id.* (quoting *Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)); 6 *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002). These factors guide a court in deciding 7 what to do and are not conditions that must be met in order for a court to take action. In *re 8 Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 1226 (9th Cir. 2006) 9 (citation omitted). 10 Here, Petitioner has failed to comply with the Court's order and Local Rules. Petitioner 11 has filed no response to the Court's order to show cause, and the time to do so has expired. There 12 are no other reasonable alternatives available to address Petitioner's failure to respond and 13 otherwise obey this Court's orders. Thus, the first and second factors—the expeditious resolution 14 of litigation and the Court's need to manage its docket—weigh in favor of dismissal. *Carey*, 856 15 F.2d at 1440. The third factor—risk of prejudice to Respondent—also weighs fairly in favor of 16 dismissal since a presumption of injury arises from the occurrence of unreasonable delay in 17 prosecuting an action. See *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). 18 The fourth factor usually weighs against dismissal because public policy favors 19 disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002). However, 20 "this factor lends little support to a party whose responsibility it is to move a case toward 21 disposition on the merits but

whose conduct impedes progress in that direction.” In re PPA, 460 F.3d at 1228. As discussed further below, the undersigned has determined the petition is time barred and Petitioner’s failure to respond to the order to show cause in a manner that would establish he is entitled to equitable tolling prevents the Court from reaching the merits of the petition. Finally, the Court’s warning to a party that failure to obey the court’s order will result in dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262. Here, as discussed above, the Court’s order cautioned Petitioner that failure to comply would 1 Having weighed the relevant factors, the undersigned recommends the petition be 2 dismissed for failure to prosecute and to obey a court order. 3

Timeliness of the Petition 4 Under the Antiterrorism and Effective Death Penalty Act (“AEDPA”), a one-year statute 5 of limitations applies to petitions seeking habeas relief under § 2254. 28 U.S.C. § 2244(d)(1). 6 Generally, the one-year clock starts to run on “the date on which the judgment became final by 7 the conclusion of direct review or the expiration of the time for seeking such review.” 42 U.S.C. 8 § 2244(d)(1)(A). Statutory tolling applies to the “time during which a properly filed application 9 for State post-conviction or other collateral review with respect to the pertinent judgment or claim 10 is pending.” 42 U.S.C. § 2244(d)(2). In limited circumstances, a petitioner is entitled to delayed 11 commencement of the limitations period. 42 U.S.C. § 2244(d)(1)(B)-(D). Additionally, equitable 12 tolling may be granted to a petitioner under limited circumstances if he shows that (1) he has been 13 pursuing his rights diligently, and (2) some extraordinary circumstance stood in his way and 14 prevented timely filing. *Holland v. Florida*, 560 U.S. 631, 649 (2010). 15 Here, Petitioner filed his federal habeas petition on August 20, 2024.¹ (Doc. 1 at 12). 16 Petitioner indicates his conviction was affirmed on direct appeal on June 20, 2016, and the 17 California Supreme Court declined review on July 25, 2017. (*Id.* at 2). Thus, Petitioner’s 18 conviction became final on October 23, 2017, when his deadline to seek certiorari from the 19 United States Supreme Court expired. *Bowen v. Roe*, 188 F.3d 1157, 1159 (9th Cir. 1999). The 20 one-year statute of limitations to file a federal petition began to run the next day, such that it 21 expired on October 23, 2018. *Patterson v. Stewart*, 251 F.3d 1243, 1246 (9th Cir. 2001). The 22 only subsequent state collateral proceedings Petitioner identified occurred in 2023 or later. (See 23 Doc. 1 at 3-4). However, state habeas petitions filed after the one-year statute of limitations 24 expired do not revive the statute of limitations and have no tolling effect. See *Larsen v. Soto*, 742 F.3d 1083, 1088 (9th Cir. 2013) (state petition filed over one year after conviction became final 26 did not render subsequent federal petition timely). Petitioner has failed to show that any of the 27

1 The Court applies the mailbox rule and deems the Petition filed on the date Petitioner delivered it to the 1 | delayed triggering events in § 2244(d)(1)(B)-(D) are applicable or that he is entitled to equitable 2 | tolling. Because it appears in this case the statute of limitations expired no later than October 23, 3 | 2018, the Petition is untimely. Accordingly, the undersigned recommends the petition be 4 | dismissed. 5 |

Conclusion and Order 6 Accordingly, IT IS RECOMMENDED as follows : 7

1. The Court DISMISS the petition for writ of habeas corpus for

Petitioner's failure 8 to prosecute this action and to comply with the Court's orders (see E.D. Cal. Local Rule 9 110) and as untimely under AEDPA; and 10 2. The Clerk of the Court be DIRECTED to close this case. 11 These Findings and Recommendations will be submitted to the United States District 12 | Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(). Within 14 days 13 | after being served with a copy of these Findings and Recommendations, a party may file written 14 | objections with the Court. Local Rule 304(b). The document should be captioned, "Objections to 15 | Magistrate Judge's Findings and Recommendations" and shall not exceed 15 pages without leave 16 | of Court and good cause shown. The Court will not consider exhibits attached to the Objections, 17 | but a party may refer to exhibits in the record by CM/ECF document and page number. Any 18 | pages filed in excess of the 15-page limitation may be disregarded by the District Judge when 19 | reviewing these Findings and Recommendations under 28 U.S.C. § 636(b))(C). 20 A party's failure to file any objections within the specified time may result in the waiver 21 | of certain rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014). 22 | IT IS SO ORDERED. | Dated: _ August 26, 2025 | Wr bo

24 UNITED STATES MAGISTRATE JUDGE

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