

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

Christopher Shane Rivera v. Jeffrey Macomber

No. 5:23-cv-00463-SSS (DTB), United States District Court for the Central District of California (August 11,
2025)

SUMMARY

The United States District Court for the Central District of California accepts the magistrate judge’s findings and recommendation in a federal habeas proceeding. The court grants the respondent’s motion to dismiss and dismisses the petition with prejudice, concluding that it was untimely, that state resentencing proceedings did not restart the limitations period, and that the asserted resentencing claims were not cognizable on federal habeas review.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 CENTRAL DISTRICT OF
CALIFORNIA 10 EASTERN DIVISION 11 CHRISTOPHER SHANE RIVERA,) Case No.
5:23-cv-00463-SSS (DTB)) 12) Petitioner,) ORDER ACCEPTING FINDINGS, 13) v.)
CONCLUSIONS AND 14) RECOMMENDATIONS OF 15 LEANNA LUNDY, ACTING))
UNITED STATES MAGISTRATE WARDEN,) JUDGE 16) 17 Respondent.) 18 Pursuant to 28
U.S.C. § 636, the Court has reviewed the Petition, all the 19 records and files herein, and the
Report and Recommendation of the United States 20 Magistrate Judge.

Objections to the Report and Recommendation have been filed 21 herein. 22 The Report
recommends the dismissal of the Petition as untimely and the 23 dismissal of this action with
prejudice. [Dkt. 45]. Petitioner’s objections to the 24 Report [Dkt. 52] do not warrant any change
to the Report’s findings or 25 recommendations. 26 27 1 28 1 Petitioner objects that the California
Supreme Court’s rejection of his state 2 habeas petition was “a clear signal that it found the [state
habeas] petition timely.” 3 [Dkt.

52 at 2-3]. On the contrary, the decisions of the California Supreme Court had 4 no effect on the
statute of limitations. Petitioner’s state habeas petitions were filed 5 with the California Supreme
Court in September 2017 and January 2023, after the 6 deadline expired in September 2013. [Dkt.
45 at 11, 13].

Thus, “the statute of 7 limitations had already lapsed and could not be reinitiated.” [Id. at 13
(citing 8 Ferguson v. Palmateer, 321 F.3d 820, 823 (9th Cir. 2003))]. 9 Petitioner objects that his
resentencing petition in the state court resulted in a 10 new, intervening judgment that re-started
the statute of limitations. [Dkt. 52 at 3-5]. 11 On the contrary, as the Report found, the denial of

resentencing relief meant there 12 was not a new, intervening judgment that restarted the statute of limitations.

[Dkt. 45 at 17 (citing *Cole v. Sullivan*, 480 F. Supp. 3d 1089, 1096 (C.D. Cal. 2020))]. See 13 also *Nguyen v. Acevedo*, 2023 WL 8478535, at *2 (E.D. Cal. Dec. 6, 2023) (“There 14 is... no basis on which to conclude that the denial [of resentencing] restarted the 15 statute of limitations for the original, underlying conviction.”); *Hernandez v. Koenig*, 16 2023 WL 7169573, at *5 (C.D.

Cal. Sept. 11, 2023) (when sentence review does not 17 result in imposition of a new judgment, the proceeding “does not restart the 18 limitation period”) (quoting *Branham v. Montana*, 996 F.3d 959, 968 (9th Cir. 19 2021)). 20 Petitioner objects that his resentencing claims, under California Penal Code 21 § 1172.6, could not have been raised in a federal habeas petition earlier than he raised 22 them.

[Dkt. 52 at 5-6]. It is unnecessary to decide when Petitioner could have raised 23 these claims. The claims are not cognizable on federal habeas review, regardless of 24 when Petitioner raised them. See *Thompson v. Guzman*, 2025 WL 1126527, at *1 25 (C.D. Cal. Mar. 20, 2025) (“As this Court repeatedly has held, a state court’s 26 allegedly erroneous denial of resentencing under section 1172.6 (or its predecessor, 27 2 28 1 || section 1170.95) does not raise an issue cognizable on federal habeas corpus.”) 2 (collecting cases).

3 Petitioner objects that his ignorance of the law and the ineffective assistance 4 || of his appellate counsel are factors to be considered. [Dkt. 52 at 7]. On the contrary, 5 ||these circumstances are not extraordinary circumstances warranting equitable 6 ||tolling. See *Rasberry v. Garcia*, 448 F.3d 1150, 1154 (9th Cir. 2006) (pro se 7 ||petitioner’s ignorance of the law is not an extraordinary circumstance); *Long v. 8 || Paramo*, 2018 WL 4772285, at *2 (C.D.

Cal. Oct. 2, 2018) (appellate counsel’s 9 || failure to raise issues is not an extraordinary circumstance) (collecting cases). 10 Having made a de novo determination of those portions of the Report and 11 ||Recommendation to which objections have been made, the Court concurs with and 12 accepts the findings, conclusions and recommendations of the Magistrate Judge.

13 IT THEREFORE IS ORDERED that Respondent’s Motion to Dismiss is 14 || granted and that Judgment be entered dismissing the Petition with prejudice. 15 16 Dated: August 11, 2025 "7
SUNSHINE SYKES 18 United States District Judge 19 20 21 22 23 24 25 26 27 28