

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Sholes v. Andes

Sholes · No. 1:24-cv-01098-JLT-CDB (HC) · Decided July 28, 2025

SUMMARY

The United States District Court for the Eastern District of California issued an order to show cause regarding Tyrone Anthony Sholes's § 2254 habeas petition. The court determined that the petition appeared untimely under AEDPA because the limitations period expired in 2018, and allowed Petitioner 21 days to explain why the petition should not be dismissed or why equitable tolling should apply.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	July 28, 2025
DOCKET	1:24-cv-01098-JLT-CDB (HC)
DISPOSITION	other
PROCEDURAL POSTURE	Petitioner filed a 28 U.S.C. § 2254 habeas petition challenging 2014 state convictions. On preliminary screening, the district court found the petition appeared untimely under AEDPA and issued an order to show cause rather than dismissing it immediately.
STANDARD OF REVIEW	Preliminary screening under Rule 4 of the Rules Governing § 2254 Cases; the court may dismiss when it plainly appears from the petition that the petitioner is not entitled to relief, but must provide notice and an opportunity to respond before sua sponte dismissing on timeliness grounds.
PRECEDENTIAL VALUE	unpublished, nonprecedential district-court order

TOPICS

- federal habeas corpus
- statute of limitations
- post-conviction relief
- pleadings
- civil procedure

PRACTICE AREAS

- federal habeas corpus
- post-conviction relief
- civil procedure

QUESTIONS PRESENTED

1. Whether the court may raise the AEDPA statute of limitations sua sponte during preliminary screening of a state habeas petition.
2. Whether the petition appears untimely under 28 U.S.C. § 2244(d) when the conviction became final on October 23, 2017 and the federal petition was filed on August 20, 2024.
3. Whether petitioner should be given an opportunity to establish statutory delayed commencement, statutory tolling, or equitable tolling before dismissal.

HOLDINGS

1. A district court may raise the timeliness of a state prisoner's federal habeas petition sua sponte, but must provide fair notice and an opportunity for the petitioner to present arguments before dismissing on that basis.
2. The petition appears untimely because the one-year limitations period began after the conviction became final on October 23, 2017 and expired on October 23, 2018, while the federal petition was not filed until August 20, 2024.
3. State habeas petitions filed after the AEDPA limitations period has expired do not revive the limitations period and do not make a later federal petition timely.
4. The court did not decide whether petitioner qualifies for delayed commencement under § 2244(d)(1)(B)-(D) or equitable tolling; it required petitioner to show cause and address those possibilities before dismissal.

KEY QUOTATIONS

“district courts are permitted, but not obliged, to consider, sua sponte, the timeliness of a state prisoner’s habeas petition” (at 1)

“before acting on its own initiative, ... must accord the parties fair notice and an opportunity to present their positions” (at 1)

“state habeas petitions filed after the one-year statute of limitations expired do not revive the statute of limitations and have no tolling effect” (at 2)

FACTUAL BACKGROUND

Petitioner Tyrone Anthony Sholes is a state prisoner challenging 2014 convictions from the Tulare County Superior Court. His direct appeal was affirmed in 2016, and the California Supreme Court declined review in 2017. He filed the federal habeas petition on August 20, 2024 and identified no state collateral proceedings until 2023 or later.

PROCEDURAL HISTORY

Petitioner's convictions were affirmed on direct appeal on June 20, 2016, and the California Supreme Court declined review on July 25, 2017. The conviction became final when the time to seek certiorari expired on October 23, 2017, making the federal limitations period appear to expire on October 23, 2018. Petitioner filed

the federal habeas petition on August 20, 2024 and identified state collateral proceedings beginning in 2023 or later. The court ordered petitioner to show cause within 21 days why the petition should not be dismissed as untimely.

DISPOSITION

other

CASES CITED

- Haines v. Kerner, 404 U.S. 519, 520-21 (1972)
- Valdez v. Montgomery, 918 F.3d 687, 693 (9th Cir. 2019)
- Boyd v. Thompson, 147 F.3d 1124, 1127 (9th Cir. 1988)
- Day v. McDonough, 547 U.S. 198, 210 (2006)
- Holland v. Florida, 560 U.S. 631, 649 (2010)
- Bowen v. Roe, 188 F.3d 1157, 1159 (9th Cir. 1999)
- Patterson v. Stewart, 251 F.3d 1243, 1246 (9th Cir. 2001)
- Larsen v. Soto, 742 F.3d 1083, 1088 (9th Cir. 2013)

OPINION

(HC) Sholes v. Andes

PER CURIAM.

1 2 3 4 5 6 7

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,
ORDER TO SHOW CAUSE WHY

PETITION SHOULD NOT BE DISMISSED

13 v. AS UNTIMELY

14 CHANCE ANDES, Warden (Doc. 1)

15 Respondent. 21-Day Deadline

16 17 Petitioner Tyrone Anthony Sholes (“Petitioner”) is a state prisoner proceeding pro se with 18
a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. 1, “Petition”). Petitioner
19 challenges his 2014 convictions in the Tulare County Superior Court. (Id. at 1). Because it 20
appears the Petition is untimely, the Court will afford Petitioner an opportunity to show cause 21
why the Court should not dismiss the Petition. 22 Preliminary Screening
23 Rule 4 of the Rules Governing § 2254 Cases requires the Court to conduct a preliminary
24 review of each petition for writ of habeas corpus. Pro se habeas corpus petitions are to be 25
liberally construed. Haines v. Kerner, 404 U.S. 519, 520-21 (1972). However, the Court must 26
dismiss a petition “[i]f it plainly appears from the petition ... that the petitioner is not entitled to 27

relief.” Habeas Rule 4; see *Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019); *Boyd v. Thompson*, 147 F.3d 1124, 1127 (9th Cir. 1988). In conducting this initial review, the Court may 1 sua sponte raise the timeliness of the petition but should only dismiss after allowing the petitioner 2 adequate notice and an opportunity to respond. *Day v. McDonough*, 547 U.S. 198, 210 (2006) 3 (holding that “district courts are permitted, but not obliged, to consider, sua sponte, the timeliness 4 of a state prisoner’s habeas petition” but “before acting on its own initiative, ... must accord the 5 parties fair notice and an opportunity to present their positions”). 6 Discussion 7 Under the Antiterrorism and Effective Death Penalty Act (“AEDPA”), a one-year statute 8 of limitations applies to petitions seeking habeas relief under § 2254. 28 U.S.C. § 2244(d)(1). 9 Generally, the one-year clock starts to run on “the date on which the judgment became final by 10 the conclusion of direct review or the expiration of the time for seeking such review.” 42 U.S.C. 11 § 2244(d)(1) (A). Statutory tolling applies to the “time during which a properly filed application 12 for State post-conviction or other collateral review with respect to the pertinent judgment or claim 13 is pending.” 42 U.S.C. § 2244(d)(2). In limited circumstances, a petitioner is entitled to delayed 14 commencement of the limitations period. 42 U.S.C. § 2244(d)(1)(B)-(D). Additionally, equitable 15 tolling may be granted to a petitioner under limited circumstances if he shows that (1) he has been 16 pursuing his rights diligently, and (2) some extraordinary circumstance stood in his way and 17 prevented timely filing. *Holland v. Florida*, 560 U.S. 631, 649 (2010). 18 Here, Petitioner filed his federal habeas petition on August 20, 2024.¹ (Doc. 1 at 12). 19 Petitioner indicates his conviction was affirmed on direct appeal on June 20, 2016, and the 20 California Supreme Court declined review on July 25, 2017. (*Id.* at 2). Thus, Petitioner’s 21 conviction became final on October 23, 2017, when his deadline to seek certiorari from the 22 United States Supreme Court expired. *Bowen v. Roe*, 188 F.3d 1157, 1159 (9th Cir. 1999). The 23 one-year statute of limitations to file a federal petition began to run the next day, such that it 24 expired on October 23, 2018. *Patterson v. Stewart*, 251 F.3d 1243, 1246 (9th Cir. 2001). The 25 only subsequent state collateral proceedings Petitioner identified occurred in 2023 or later. (See 26 Doc. 1 at 3-4). However, state habeas petitions filed after the one-year statute of limitations 27 1 The Court applies the mailbox rule and deems the Petition filed on the date Petitioner delivered it to the 1 | expired do not revive the statute of limitations and have no tolling effect. See *Larsen v. Soto*, 742 2 | F.3d 1083, 1088 (9th Cir. 2013) (state petition filed over one year after conviction became final 3 | did not render subsequent federal petition timely). Petitioner fails to plead facts demonstrating he 4 | is entitled to the delayed triggering events in § 2244(d)(1)(B)-(D) or equitable tolling. Because it 5 || appears in this case the statute of limitations expired no later than October 23, 2018, the Petition 6 | is untimely. 7 However, before the Court dismisses the petition as untimely, it will afford Petitioner an 8 || opportunity to explain how his petition complies with § 2244(d) or why equitable tolling should 9 | apply. In presenting any argument regarding equitable tolling, Petitioner is cautioned to 10 || specifically address the requirements set forth in *Holland*. 11 | Conclusion and Order 12 Accordingly, IT IS ORDERED:

13 Within 21 days from the date of this order, Petitioner SHALL show cause in writing why
14 | the Petition should not be dismissed as untimely. 15 Any failure to timely comply with this
Order may result in a recommendation that the 16 | Petition be dismissed. 17 | IT IS SO
ORDERED. 'S Dated: _ July 25, 2025 | br Pr
19 UNITED STATES MAGISTRATE JUDGE
20 21 22 23 24 25 26 27 28