

**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

OPINION

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 commencement of the limitations period. 42 U.S.C. § 2244(d)(1)(B)-(D). Additionally, equitable tolling may be granted to a petitioner under limited circumstances if he shows that (1) he has been pursuing his rights diligently, and (2) some extraordinary circumstance stood in his way and prevented timely filing.

Holland v. Florida, 560 U.S. 631, 649 (2010). Here, Petitioner filed his federal habeas petition on August 20, 2014 (Doc. 1 at 12). Petitioner indicates his conviction was affirmed on direct appeal on June 20, 2016, and the California Supreme Court declined review on July 25, 2017. (Id. at 2).

Thus, Petitioner’s conviction became final on October 23, 2017, when his deadline to seek certiorari from the United States Supreme Court expired. *Bowen v. Roe*, 188 F.3d 1157, 1159 (9th Cir. 1999). The one-year statute of limitations to file a federal petition began to run the next day, such that it expired on October 23, 2018. *Patterson v. Stewart*, 251 F.3d 1243, 1246 (9th Cir.

2001). The only subsequent state collateral proceedings Petitioner identified occurred in 2023 or later. (See Doc. 1 at 3-4). However, state habeas petitions filed after the one-year statute of limitations 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 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

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