

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

Daniel E. Preciado v. M. Gamboa

No. 5:24-cv-1504-SRM-AGR (C.D. Cal. June 23, 2025) · No. 5:24-cv-1504-SRM-AGR · Decided June 23,
2025

OPINION

Daniel E. Preciado v. M. Gamboa

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA

10 11 DANIEL E. PRECIADO, Case No. 5:24-cv-1504-SRM-AGR 12 Petitioner, ORDER
DISMISSING PETITION FOR 13

WRIT OF HABEAS CORPUS [1]

v. 14

M. GAMBOA,

15 Respondent. 16

17 18 I.

19 PROCEDURAL HISTORY

20 Petitioner constructively filed a Petition for Writ of Habeas Corpus by a 21 Person in State
Custody (“Petition”) pursuant to 28 U.S.C. § 2254 (Petition, Dkt. 22 1). 23 On February 19, 2025,
the Magistrate Judge issued an Order to Show 24 Cause requiring Petitioner to show cause, in
writing, on or before March 24, 2025, 25 why the Petition for Writ of Habeas Corpus should not
be dismissed with 26 prejudice as barred by the statute of limitations (Dkt. 8). Petitioner was
warned 27 that if he failed to file a timely response to the order to show cause, the Petition 28 for
Writ of Habeas Corpus may be dismissed with prejudice. Id. at 7. 1 Petitioner did not file a
response to the order to show cause or request an 2 extension of time to do so. On May 12, 2025,
Petitioner filed a response to the 3 order reassigning the matter to this Court (“Response”) (Dkt.
11). Accordingly, the 4 Petition is due to be dismissed as barred by the statute of limitations of the
5 Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”). II. 6

SUMMARY OF PROCEEDINGS

7 The following procedural history is taken from available state court records. 8 See Fed. R. Evid.
201; Porter v. Ollison, 620 F.3d 952, 955 n.1 (9th Cir. 2010) 9 (taking judicial notice of state court
docket). 10 The Petition challenges a judgment in the Superior Court of San Bernardino 11
County in Case No. FWV1301819 (Petition at 8-9).1 A jury found Petitioner guilty 12 of three
counts of forcible lewd acts upon a child in violation of Cal. Penal Code § 13 288(b)(1). See

People v. Preciado, Case No. EO62897, 2016 WL 878327, at *1 14 (Cal. Ct. App. Mar. 8, 2016). On February 6, 2015, Petitioner was sentenced to an 15 aggregate term of 30 years.² Id. 16 On March 8, 2016, the California Court of Appeal affirmed the judgment. 17 See Preciado, 2016 WL 878327, at *1. According to the California Appellate 18 Courts Case Information System, Petitioner did not file a petition for review or any 19 state habeas petition before the California Supreme Court. See California 20 Appellate Courts Case Information System, available at 21 <https://appellatecases.courtinfo.ca.gov/>. Nor does the Petition reflect such action 22 (Petition). 23 24 25 26 1 All citations are to the page numbers assigned by CM/ECF in the header of the document. 27 2 The trial court sentenced Petitioner to the upper term of 10 years on each count and made the sentences consecutive under Cal. Penal Code § 667.6. See Preciado, 28 2016 WL 878327, at *1. 1 Petitioner constructively filed a Petition for Writ of Habeas Corpus in this 2 court on July 3, 2024 (Petition at 21).³ The Petition alleges various grounds for 3 relief, including misapplications of California sentencing laws, and seeks a 4 reduction in what Petitioner believes is an illegal sentence. Id. at 8-19. All of the 5 grounds for relief are wholly unexhausted in that they have not been presented to the California Supreme Court. 6 III. 7

DISCUSSION

8 A. Timeliness 9 The AEDPA, which applies to this action, contains a one-year statute of 10 limitations for a petition for writ of habeas corpus filed in federal court by a person 11 in custody pursuant to a judgment of a state court. See 28 U.S.C. § 2244(d)(1). 12 The one-year period starts running on the latest of either the date when a 13 conviction becomes final under 28 U.S.C. § 2244(d)(1)(A) or on a date set in 14 § 2244(d)(1)(B)-(D). The statute of limitations applies to each claim on an 15 individual basis. See *Mardesich v. Cate*, 668 F.3d 1164, 1171 (9th Cir. 2012). 16 1.

The Date on Which Conviction Became Final

17 Under 28 U.S.C. § 2244(d)(1)(A), the limitations period runs from the date 18 on which the judgment became final by the conclusion of direct review or the 19 expiration of the time for seeking direct review. 20 Petitioner was sentenced and judgment was entered no later than February 21 6, 2015. See Preciado, 2016 WL 878327, at *1 The California Court of Appeal 22 affirmed the judgment on March 8, 2016. Id. Petitioner did not file a petition for 23 review before the California Supreme Court. Therefore, his conviction became 24 3 The Petition was signed on July 3, 2024 (Petition at 21, 24). The Court gives 25 Petitioner the benefit of the earlier date on the signature page. See, e.g., *Robinson v. Lewis*, 795 F.3d 926, 933 n.6 (9th Cir. 2015) (“Because [petitioner] was a pro se, incarcerated petitioner, the ‘mailbox rule’ applies, meaning that his petition is deemed 27 filed on the date of its submission to the prison authorities for mailing Because the dates found by the magistrate judge are not disputed, we rely on the dates found by the 28 magistrate judge as the operative ones.”). 1 final 40 days later, on April 18, 2016. See *Gaston v. Palmer*, 417 F.3d 1030, 1033 2 (9th Cir. 2005). 3 The AEDPA statute of limitations period expired one year later, on April 18, 4 2017. Petitioner constructively filed this Petition no earlier than July 3, 2024, over 5 six years after the statute of limitations had run

(Petition at 21). Absent a showing that the accrual date was delayed or the limitations period was tolled, the Petition is untimely. 7

2. Delayed Accrual – § 2244(d)(1)(D)

8 Under § 2244(d)(1)(D), the limitations period starts running on “the date on 9 which the factual predicate of the claim or claims presented could have been 10 discovered through the exercise of due diligence.” See 28 U.S.C. § 2244(d)(1)(D). 11 “The ‘due diligence’ clock starts ticking when a person knows or through diligence 12 could discover the vital facts, regardless of when their legal significance is 13 actually discovered.” *Ford v. Gonzalez*, 683 F.3d 1230, 1235 (9th Cir. 2012). 14 The record does not contain any basis for delayed accrual on a date after 15 Petitioner’s conviction and sentence became final. The Petition remains untimely. 16

3. Statutory Tolling 17

Generally, the statute of limitations is tolled during the time “a properly filed 18 application for State post-conviction or other collateral review with respect to the 19 pertinent judgment or claim is pending.” See 28 U.S.C. § 2244(d)(2); *Waldrip v. 20 Hall*, 548 F.3d 729, 734 (9th Cir. 2008). However, once the limitation period has 21 expired, later-filed state habeas petitions do not toll the limitation period. See 22 *Jiminez v. Rice*, 276 F.3d 478, 482 (9th Cir. 2001). 23 As Petitioner has not so indicated and a search of the California Appellate Courts Case Information System supports that Petitioner has not filed any state 24 habeas petitions, Petitioner, therefore, is not entitled to statutory tolling. Thus, the 25 Petition is untimely unless Petitioner can demonstrate that he is entitled to 26 equitable tolling. 27

4. Equitable Tolling 28

1 A petitioner who files a federal habeas petition after expiration of the one- 3 year statute of limitations may be entitled to equitable tolling. See *Holland v. 4 Florida*, 560 U.S. 631, 649 (2010). The petitioner must show “(1) that he has been 5 pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing.” *Id.* (internal quotation marks and citation 6 omitted). The diligence required for equitable tolling is “reasonable diligence” and 7 not maximum feasible diligence. *Id.* at 653 (citation omitted). The extraordinary 8 circumstances must be the cause of the untimeliness. See *Bryant v. Ariz. Att’y 9 Gen.*, 499 F.3d 1056, 1061 (9th Cir. 2007). “Indeed, the threshold necessary to 10 trigger equitable tolling [under AEDPA] is very high, lest the exceptions swallow 11 the rule.” *Miranda v. Castro*, 292 F.3d 1063, 1066 (9th Cir. 2002) (internal 12 quotation marks and citation omitted). 13 The record does not disclose any basis for equitable tolling. Accordingly, the 14 Petition is untimely. 15

B. Exhaustion 16

A federal court generally will not address the merits of a habeas corpus 17 petition unless the petitioner has first exhausted state remedies. See *Rose v. 18 Lundy*, 455 U.S. 509, 518-22 (1982). 19 A habeas petition brought by a person in state custody cannot be granted 20 “unless it appears that—(A) the applicant has exhausted the remedies available in 21 the courts of the State; or (B)(i) there is an absence of available State corrective 22 process; or (ii) circumstances exist that render such process ineffective to protect 23 the rights of the applicant.” See 28 U.S.C. § 2254(b)(1). To exhaust state remedies, a petitioner must fairly present his contentions to the state courts, and 24 the highest court of the state must dispose of them on the merits. See *O’Sullivan 25 v. Boerckel*,

526 U.S. 838, 842, 844-45 (1999). A district court may raise a failure to exhaust sua sponte. See *Stone v. San Francisco*, 968 F.2d 850, 856 (9th Cir. 27 1992). Importantly, Petitioner bears the burden of demonstrating that he has exhausted available state remedies. See *Rollins v. Superior Court of Los Angeles*, 706 F. Supp. 2d 1008, 1011 (C.D. Cal. 2010); see also *Williams v. Craven*, 460 F.2d 1253, 1254 (9th Cir. 1972) (stating petitioner may renew a petition in district court if petitioner is able to demonstrate satisfaction of the exhaustion requirement). Here, neither the California Appellate Courts Case Information System nor the Petition indicate that Petitioner has filed a petition for review or any state habeas petition before the California Supreme Court so that the same grounds for relief would have been raised as those he asserts in the Petition. Thus, the Petition appears to be wholly unexhausted. See *Rasberry v. Garcia*, 448 F.3d 1150, 1154 (9th Cir. 2006). IV.

ORDER

IT IS THEREFORE ORDERED that the Petition for Writ of Habeas Corpus (Dkt. 1) is dismissed with prejudice as barred by the statute of limitations.4 15 16 Ye | / 17 | DATED: June 23, 2025

HON. SERENA R. MURILLO

UNITED STATES DISTRICT JUDGE

20 21 22 23 24 25 26 27 * Petitioner's response indicates that he has filed a petition for resentencing in the Superior Court pursuant to Cal. Penal Code § 1172.1 (Dkt. 11). This Order is without prejudice to his state court petition.