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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

HAURILIO SILVA VALENCIA,
Petitioner,
v.
JOSEPH TUGGLE,¹
Respondent.

No. 2:24-cv-2994 TLN CSK P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner, a state prisoner, proceeds pro se with an application for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Respondent filed a motion to dismiss this action alleging the petition was filed beyond the one-year statute of limitations. 28 U.S.C. § 2244(d). As set forth below, the Court recommends that the fully briefed motion be granted.

I. BACKGROUND

This action was constructively filed on October 31, 2024 (ECF No. 1 at 71). Rule 3(d), Rules Governing Habeas Corpus Cases Under Section 2254.

On February 27, 2025, respondent filed the motion to dismiss. (ECF No. 10.) On April 25, 2025, after being granted an extension of time, petitioner filed an opposition. (ECF No. 13.) On May 9, 2023, respondent filed a reply. (ECF No. 14.)

¹ The Warden of Folsom State Prison, Joseph Tuggle, is substituted as respondent in this matter. Fed. R. Civ. P. 25(d); see Brittingham v. United States, 982 F.2d 378, 379 (9th Cir. 1992).

1 On May 15, 2025, the Court issued a further briefing order, requiring respondent to file
2 the amended abstract of judgment, and address the implications, if any, of the amended abstract
3 of judgment on the calculation of the limitations period. (ECF No. 15.) On June 5, 2025,
4 respondent filed the amended abstract of judgment and filed their response to the order. (ECF
5 No. 16, 17.) Petitioner did not file a reply on or before June 26, 2025.

6 II. STANDARDS GOVERNING MOTION TO DISMISS

7 Rule 4 of the Rules Governing Section 2254 Cases allows a district court to dismiss a
8 petition if it “plainly appears from the face of the petition and any exhibits annexed to it that the
9 petitioner is not entitled to relief in the district court. . . .” Id. The Court of Appeals for the Ninth
10 Circuit has referred to a respondent’s motion to dismiss as a request for the court to dismiss under
11 Rule 4 of the Rules Governing § 2254 Cases. See, e.g., O’Bremski v. Maass, 915 F.2d 418, 420
12 (1991). Accordingly, the Court reviews respondent’s motion to dismiss pursuant to its authority
13 under Rule 4.

14 III. STATUTE OF LIMITATIONS

15 A. Legal Standards

16 The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) imposed a statute
17 of limitations on petitions for a writ of habeas corpus filed by state prisoners. This statute of
18 limitations provides that:

19 A 1-year period of limitation shall apply to an application for a writ
20 of habeas corpus by a person in custody, pursuant to the judgment of
a State court. The limitation period shall run from the latest of –

21 (A) the date on which the judgment became final by the conclusion
22 of direct review or the expiration of the time for seeking such review;

23 (B) the date on which the impediment to filing an application created
24 by State action in violation of the Constitution or laws of the United
States is removed, if the applicant was prevented from filing by such
State action;

25 (C) the date on which the constitutional right asserted was initially
26 recognized by the Supreme Court, if the right has been newly
recognized by the Supreme Court and made retroactively applicable
27 to cases on collateral review; or

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1 (D) the date on which the factual predicate of the claim or claims
2 presented could have been discovered through the exercise of due
diligence.

3 28 U.S.C. § 2244 (d)(1).²

4 B. Chronology³

5 For purposes of the statute of limitations analysis, the relevant chronology of this case is
6 as follows:

7 1. A jury in Colusa County Superior Court convicted petitioner of making criminal
8 threats, theft by larceny, and resisting arrest. (ECF No. 1 at 1.) On December 6, 2019, the trial
9 court imposed an aggregate prison term of 45 years to life: 25 years to life for making criminal
10 threats, a concurrent sentence of six months for the theft by larceny conviction, and a concurrent
11 sentence of one year for the resisting a peace officer conviction, and also sentenced petitioner to
12 four consecutive terms of five years for each prior serious conviction. (ECF Nos. 9-1; 9-2 at 2.)

13 2. Petitioner filed a timely appeal.

14 3. On February 15, 2022, in Case No. C091120, the California Court of Appeal for the
15 Third Appellate District vacated two of the five-year enhancement terms imposed under section
16 667, subdivision (a), directed the trial court to prepare an amended abstract of judgment, and
17 affirmed the judgment as modified. (ECF No. 9-2 at 7-8.)

18 4. On May 22, 2022, the Colusa County Superior Court issued an amended abstract of
19 judgment, sentencing petitioner to 25 years to life on Count 2, making criminal threats, and
20 imposing a sentencing enhancement of ten years under California Penal Code § 557(e)(1). (ECF
21 No. 17-1.)

22 5. Petitioner did not file a petition for review in the California Supreme Court.

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25 ² The limitations period may begin running later under certain circumstances, 28 U.S.C.
26 § 2244(d)(1)(B), (C), & (D), but none of these circumstances apply here.

27 ³ Unless otherwise indicated, all of petitioner's subsequent court filings were given benefit of the
28 mailbox rule. See Campbell v. Henry, 614 F.3d 1056, 1059 (9th Cir. 2010) (under the mailbox
rule, the petition is deemed filed when handed to prison authorities for mailing).

1 6. On February 6, 2023, in Case No. CV24650, petitioner filed a petition for writ of
2 habeas corpus in the Colusa County Superior Court. (ECF No. 9-3 at 8.) The petition was denied
3 on May 22, 2023. (ECF No. 9-4.)

4 7. On June 26, 2023, in Case No. C098923, petitioner filed a petition for writ of habeas
5 corpus in the California Court of Appeal, Third Appellate District. (ECF No. 9-5 at 64.) The
6 California Court of Appeal denied the petition on July 14, 2023. (ECF No. 9-6.)

7 8. On July 26, 2023, petitioner filed a petition for writ of habeas corpus in the California
8 Supreme Court. (ECF No. 9-7.) The California Supreme Court denied the petition on November
9 15, 2023. (ECF No. 9-8.)

10 9. On October 31, 2024, petitioner constructively filed the instant federal petition. See
11 Rule 3(d) of the Federal Rules Governing Section 2254 Cases.

12 C. Calculation of Limitations Period

13 For purposes of calculating the limitations period in this case, § 2244(d)(1)(A) applies.
14 The California Court of Appeal affirmed the conviction on February 15, 2022. (ECF No. 9-2.)
15 As argued by respondent, the state appellate court did not remand petitioner’s case for re-
16 sentencing. (ECF No. 16 at 2 (citing ECF No. 9-2).) Rather, the state appellate court remanded
17 the case directing the trial court “to prepare an amended abstract of judgment consistent with this
18 opinion.” (ECF No. 9-2 at 7-8.) According to California law, “[b]ecause the ‘abstract of
19 judgment is not the judgment of conviction’ and ‘does not control if different from the court’s
20 oral judgment,’ a court must amend the abstract of judgment any time there is a discrepancy
21 between the two.” See Gonzalez v. Sherman, 873 F.3d 763, 770 (9th Cir. 2017) (quoting People
22 v. Mitchell, 26 Cal. 4th 181, 185 (2001)). Consequently, the state appellate court’s February 15,
23 2022 order modifying the judgment constituted the new judgment, and the remand to the trial
24 court was to ensure the abstract of judgment recorded the new judgment. Id.; see also Dyson v.
25 Warden, California Corr. Inst., 2019 WL 3065890, at *2 (E.D. Cal. July 12, 2019). Therefore,
26 any appeal would be taken from the state appellate court’s February 15, 2022 order, not the
27 amended abstract of judgment, by filing a petition for review in the California Supreme Court.

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1 Here, petitioner did not file a petition for review in the California Supreme Court.
2 Therefore, the judgment became final forty days later on March 27, 2022. See Cal. R. Ct. 8.366,
3 8.500. The limitations period began the next day, March 28, 2022. See Patterson v. Stewart, 251
4 F.3d 1243, 1246 (9th Cir. 2001) (the AEDPA limitations period begins to run on the day after the
5 triggering event pursuant to Fed. R. Civ. P. 6(a)). Thus, the one-year limitation period
6 commenced on March 28, 2022, and, absent tolling, expired on March 28, 2023.

7 D. Statutory Tolling

8 Section 2244(d)(2) provides that “the time during which a properly filed application for
9 State post-conviction or other collateral review with respect to the pertinent judgment or claim is
10 pending shall not be counted toward” the limitations period. 28 U.S.C. § 2244(d)(2). A properly
11 filed application is one that complies with the applicable laws and rules governing filings,
12 including the form of the application and time limitations. Artuz v. Bennett, 531 U.S. 4, 8 (2000).

13 Petitioner filed his first state court petition on February 6, 2023. Petitioner is not entitled
14 to tolling from March 28, 2022, through February 5, 2023, because no state court petition was
15 pending. 28 U.S.C. § 2244(d)(2). By March 27, 2023, 314 days of the limitations period had
16 expired. This meant that petitioner had 51 days left to file his federal habeas petition.

17 Respondent agrees that petitioner is entitled to statutory tolling for the periods his first,
18 second and third state habeas petitions were pending. (ECF No. 10 at 5 (citing Pace v.
19 DiGuglielmo, 544 U.S. 408, 414 (2005).) The record confirms that petitioner sought appellate
20 review of the same claims in one complete round of state habeas petitions and did so within a
21 reasonable time; thus, petitioner’s collateral challenges were “properly filed” within the meaning
22 of 28 U.S.C. § 2244(d)(2). Pace, 544 U.S. at 414. Accordingly, petitioner is entitled to statutory
23 tolling from February 6, 2023, the date he filed his first state habeas petition, through November
24 15, 2023, the date the California Supreme Court denied the third state habeas petition.

25 The limitations period began to run again on November 16, 2023, and expired 51 days
26 later, on Saturday, January 6, 2024. Because the deadline fell on a Saturday, petitioner had until
27 Monday, January 8, 2024, to file his federal habeas petition. However, petitioner did not file his

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1 federal petition until October 31, 2024, over nine and a half months after the limitations period
2 expired.

3 E. Equitable Tolling

4 Petitioner did not seek equitable tolling. It is petitioner's burden to demonstrate that he is
5 entitled to equitable tolling. Espinoza-Matthews v. California, 432 F.3d 1021, 1026 (9th Cir.
6 2005). Petitioner failed to demonstrate he is entitled to equitable tolling.

7 F. Petitioner's Action is Untimely

8 The statute of limitations period expired on January 8, 2024. Petitioner did not file the
9 instant action until October 31, 2024. Because petitioner filed this action over nine and a half
10 months after the statute of limitations expired, this action is untimely, and respondent's motion to
11 dismiss should be granted.

12 IV. CONCLUSION

13 Accordingly, IT IS HEREBY ORDERED that Joseph Tuggle, Warden of Folsom State
14 Prison, is substituted as respondent in this matter.

15 Further, IT IS RECOMMENDED that:

- 16 1. Respondent's motion to dismiss (ECF No. 26) be granted; and
- 17 2. This action be dismissed with prejudice.

18 These findings and recommendations are submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **twenty-one** days
20 after being served with these findings and recommendations, any party may file written
21 objections with the court and serve a copy on all parties. Such a document should be captioned
22 "Objections to Magistrate Judge's Findings and Recommendations." In his objections petitioner
23 may address whether a certificate of appealability should issue in the event he files an appeal of
24 the judgment in this case. See Rule 11, Federal Rules Governing Section 2254 Cases (the district
25 court must issue or deny a certificate of appealability when it enters a final order adverse to the
26 applicant). Where, as here, a habeas petition is dismissed on procedural grounds, a certificate of
27 appealability "should issue . . . if the prisoner shows, at least, [1] that jurists of reason would find
28 it debatable whether the petition states a valid claim for the denial of a constitutional right, and

1 [2] that jurists of reason would find it debatable whether the district court was correct in its
2 procedural ruling.” Petrocelli v. Angelone, 248 F.3d 877, 883-84 (9th Cir. 2001) (quoting Slack
3 v. McDaniel, 529 U.S. 473, 478 (2000)). Any response to the objections shall be served and filed
4 within fourteen days after service of the objections. The parties are advised that failure to file
5 objections within the specified time may waive the right to appeal the District Court’s order.
6 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

7 Dated: 07/02/25

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10 CHI SOO KIM
11 UNITED STATES MAGISTRATE JUDGE

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