

1 Ruiz, Randal AL6986

2 CSATF E1-2140

3 BOX 5242

4 Corcoran, CA 93212

5 In Pro Per

6 IN THE SUPREME COURT OF THE UNITED STATES

7 RUIZ

NO. _____

8 vs

USCA9 NO. 17-55638

9
10 BEARD

MOTION TO FILE OUT OF
TIME PETITION FOR WRIT
OF CERTIORARI

11
12 Pursuant to the Clerk of the Court's 08/06/18 letter,
13 (Exhibit p.1) petitioner, Randal Ruiz, proceeding in pro
14 per and in forma pauperis, hereby resubmits his petition,
15 rejected as untimely by one day, with this motion to
16 file it out of time. Petitioner provides the reasons for
17 untimeliness herein.

18
19 The clerk's letter was received with the USPS Mail
20 Recovery Center letter. (Exhibit p.3)

21 This motion is based petitioner is entitled to the bene-
22 fit of equitable tolling because he is systematically
23 denied a lower bunk and is repeatedly forced to do all
24 legal work seated cross legged on a top bunk with
25 arthritis pain in his back and neck. Additionally, peti-
26 tioner was suffering severe pain from a torn ligament
27 in his right shoulder without pain medication and
28

p. 1 of 8

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

coffee for five days.

This motion is based on the declaration, memorandum, of points and authorities and evidentiary documents served and filed herewith.

DECLARATION

I, Randal Ruiz, ~~do~~ declare as follows:

In Feb. 2018, while in Tehachapi, ~~with~~ ~~one~~ was told by medical staff my prescription for acetaminophen was good until June 2018. But in SATF, he was told it expired.

On March 30th, 2018 I injured my right shoulder moving my property and legal papers from cell E1-239 upper to E3-230 upper. ~~Perthore~~ I remained assigned to an upper bunk until 5/10/18. I was reassigned to an upper bunk on 6/23/18, and continue to occupy upper bunks.

I reported my shoulder injury in a 4/10/18 health care grievance, Log No. SATF HC-1800982 (Exhibit p. 32-35) and 4/23/18 grievance SATF HC 18001032. (Exhibit p. 25-30) I requested pain medication, acetaminophen in the 4/10/18 grievance and in 7362 FORM Medical Services Requests dated 4/17/18 and 4/23/18

I complained about not getting any pain medication between Nov. 2017 and March 2018 in health care grievance Log No. SATF HC 000890. (Exhibit p. 11)

I reported suffering from body aches from a suspected tick bite in the 4/23/18 grievance. (Exhibit p. 25)

I have repeatedly complained of being constrained to do all legal work seated cross legged on the top bunk instead of a stool and desk in 602 Log No.s SATFHC 12056500, CENHC 13026714, CENHC - 13026675, SATFHC 13057750, CENHC 14026767 and PVSPHC 14051083. which are health care grievances.

I also complained of being forced to do all legal work on the top bunk in a green 602 with CDCR custody, Log No. PVSP D15-00372 in the manner depicted in my cell diagram exhibit. (Exhibit p. 7-8)

CDCR Health Care Grievance Chief Zamora stated I do not meet CDCR's criteria for a lower bunk chrono in SATFHC 12056500. (Exhibit p. 47)

More recently I complained of being forced to do all legal work seated on top bunk(s) in health care grievances SATFHC 18000885, (Exhibit p. 18) SATFHC 18001032, (Exhibit p. 25) and custody

602 Log No. SATFHC 18-2029. (Exhibit p. 37-45)

I sought 3rd level of review to Chief of Inmate Appeals on July 4th, 2018. (Exhibit p. 38; 40)

I sought Headquarters level review to Health Care Correspondence and Appeals Branch on my claim that my shoulder injury restricted me from doing legal work. (see Exhibit pages 18-19, 25 1/2, 26; 32 1/2)

I completely ran out of acetaminophen April 10th, 23rd and 30th, 2018.

I was diagnosed with degenerative disk disease arthritis in 2001, at Community Health Alliance of Pasadena, (CA).

I drink coffee with acetaminophen to ease pain.

sitting cross legged on top bunk, I lean on my right elbow when writing. But after I tore a ligament in my right shoulder, I had to take tylenol round the clock, because I couldn't sleep because the pain was so severe. When the medication and coffee ran out I couldn't do any legal work because it was too painful.

VERIFICATION

I, Randal Ruiz, under penalty of perjury, declare the foregoing declaration is true and correct. CCP 2015.5, 28 USC 1746. Executed in in Corcoran, California on this 30th day of August, 2018. Randal Ruiz 8/30/18
Randal Ruiz

MEMORANDUM OF POINTS AND AUTHORITIES

Throughout his incarceration petitioner Ruiz has managed arthritis pain with acetaminophen and, when available, coffee. (coffee may ease arthritis pain. CBS Channel 47, Fresno, aired 5/25/07, coffee with dural is a valid medical condition, ABC News, aired 6/02/13 coffee is an ingredient in the over the counter medication Excedrine Migraine.

1 Petitioner alleged acetaminophen was being withheld in
2 retaliation for grievances, at Exhibit pg. 11, which states
3 a claim under 1983. (Perez v. Fenoglio (CA7 Ill '15) 792
4 F3d 768, 783, To me v. Hawaii (CA9 Hwa '14) 570 F.
5 Appx 717, 719)

6 To receive the benefit of equitable tolling petitioner
7 must show diligent pursuit of his rights and that some ex-
8 traordinary circumstance stood in his way. (Gonzales v.
9 Crosby (05) 545 US 524, 535, 162 LEd2d 480, 494, 125
10 Sct 2641, Pace v. Diguglielmo (05) 544 US 408, 418, 125
11 Sct 1807, 161 LEd2d 669, 679)

12 Under the ~~the~~ equitable tolling doctrine the filing dead-
13 line clock stops running when extraordinary circum-
14 stances first arise. (Lantex v. Centex (03) 31 C4th 363, 370,
15 73 P3d 517, 523, 2CR3d 655, Luna v. Kernan (CA9 Cal '15)
16 784 F3d 640, 651)

17 Timeliness and tolling are highly fact dependent
18 (Cooper v. Neven (CA9 Cal '11) 641 F3d 322, 328) Ruiz pursued
19 CDCR's administrative remedies to show diligence in pur-
20 suit of a remedy. (Marsh v. San Diego (SD Cal '06) 432 F Supp2d
21 1035, 1055-56 (prisoner entitled to equitable tolling where he
22 has several formal legal remedies and reasonably and in good
23 faith pursues one)

24 Petitioner has attached his administrative grievances, which
25 promotes judicial efficiency and provides a record for the

court to review. (Sierra Club v. San Joaquin (99) 21 C 441
489, 501, ~~2~~ 981 P 2d 543, 551, 87 CR 2d 702, 711, Woodford
v. Ngo (06) 548 US 81, 89, 126 SC 2378, 165 LEd2d 368, 377)

The declaration and exhibits show CDCR medical ~~staff~~
and custody staff, acting under color of authority
(George v. Sonoma Co. (N.D. Cal. '10) 732 F Supp 2d 922, 934-35)
were personally involved in the decisions to repeatedly
deny Ruiz a lower bed chrono based on criteria-crit-
erion, pursuant to official CDCR policy. (Ford v. Grand
Traverse (06 Mich '08) 535 F3d 483, 498, Hartman v.
CDCR (09 Cal '13) 707 F3d 1114, ~~1122~~ 1127, Collwell v.
Banister (09 Nev. '14) 736 F3d 1060, 1069) This shows that
official CDCR ~~po~~ criteria was the moving force behind
the violation. (Collwell 736 F3d @ 1069)

Petitioner claims CDCR didn't apply the proper
comparative baseline because CDCR failed to make a
determination of how Ruiz performed a major life
activity of central, even grave importance (Lott v.
Mueller (09 CD Cal doing legal work on the top bunk as
compared to average unimpaired people in the general
population.

CDCR didn't apply the proper standards in making
a determination because it analyzed only a limited class
of tasks and failed to ask whether Ruiz's impairment

restricted him from performing the very activity of central importance, doing legal work on the top bunk.
(29 CFR 1630.2(j)(1)(ii), *Arteaga v Brinks* (2nd Dist '08) 163044th 327, 345-46, *EEOC v USPS* (49 Cal '05) 424 F3d 1060, 1071, *Toyota v Williams* (02) 534 US 184, 195-97, 151 LED2d 615, 630-31, 122 Sct 681)

A new limitations period ~~begins~~ begins each time RUIZ's Reasonable accommodation request is denied.
(*Cherovsky v Henderson* (9th '03) 330 F3d 1243, 1248)

Petitioner is also denied access to the cell aisleway.
(Exhibit pg. 39) (see *Andersons v. Macy's* (W.D. Penn '13) 943 Fsupp 2d 531, 549, *Colorado Cross Disability Coalition v. Too* (D. Colo. '04) 344 Fsupp 2d 707, 710-17)

Petitioner is required to identify the time period he suffered and how the pain prevented timely filing.
(*Cannell v Bradshaw* (D. Or '93) 840 Fsupp 1382, 1386-87, *Lanz v Alabama* (11 Ala '06) 179 F. Appx 650, 652, *Stout v MSPB* (Fed Cir '04) 389 F3d 1233, 1235)

The record and petitioner's verified declaration show petitioner suffered from a torn ligament in his right shoulder. Petitioner had to sit, as always, cross legged on the top bunk, leaning on his right elbow ~~to~~ to write.

But when pain medication ran out on April 10th, 23rd and 30th, 2018, he couldn't handwrite documents because of severe pain in his shoulder

under Gatlin v. Tilton N.D. Cal. 2012 U.S. Dist. Lexis
105693 and Gatlin v. Tilton (CA9 Cal '10) 378 Fed. Appx
671, 672 petitioner is entitled to equitable tolling
during periods of debilitating pain intermingled with
periods when the pain was managed by medication

RELIEF REQUESTED

WHEREFORE, for the foregoing reasons the Court
should grant petitioner, Randal Ruiz equitable tolling
of one to five days, grant petitioner's motion to file
his out of time petition for certiorari

Respectfully submitted AUG. 30, 2018

Randal Ruiz

Randal Ruiz

Proof of Service By Mail

I, Randal Ruiz did place this motion with exhibits
pgs 1 thru 49 incorporated into the motion by reference
and attached in a postage prepaid envelope addressed
to Clerk, United States Supreme Court Bldg, 1 First Street
NE, Washington, DC 20543-0001 and gave said envelope
to officers in EI for delivery there to via USPS
28 USC 1746 and Houston - Lock (88) 487 US 266, 269
on Sept. 6, 2018 Randal Ruiz 9/06/18

Randal Ruiz

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

SEP 25 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RANDAL RUIZ,

Petitioner-Appellant,

v.

JEFFERY BEARD,

Respondent-Appellee.

No. 17-55638

D.C. No. 2:14-cv-08693-PA-RAO
Central District of California,
Los Angeles

ORDER

Before: CHRISTEN and OWENS, Circuit Judges.

The motion for reconsideration (Docket Entry No. 8) is denied. *See* 9th Cir.

R. 27-10.

No further filings will be entertained in this closed case.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

AUG 21 2017

MOLLY C. DWYER, CLERK
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No. 17-55638

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Central District of California,
Los Angeles

ORDER

Before: FARRIS and LEAVY, Circuit Judges.

This appeal is from the denial of appellant's 28 U.S.C. § 2254 petition and subsequent Federal Rule of Civil Procedure 60(b) motion. The request for a certificate of appealability (Docket Entry No. 4) is denied. Appellant has not shown that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); *United States v. Winkles*, 795 F.3d 1134, 1143 (9th Cir. 2015), *cert. denied*, 136 S. Ct. 2462 (2016); *Lynch v. Blodgett*, 999 F.2d 401, 403 (9th Cir. 1993) (order).

Any pending motions are denied as moot.

DENIED.

**Additional material
from this filing is
available in the
Clerk's Office.**