No. _____

_____ ◆ _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER 2020 TERM

_____ ◆ _____

JUAN GILBERTO MEDRANO,
PETITIONER

v.

ROSEMARY NDOH, Warden,
RESPONDENT

_____ ◆ _____

APPENDICES TO PETITION FOR WRIT OF CERTIORARI TO

THE SUPREME COURT OF THE UNITED STATES

_____ ◆ _____

Jan B. Norman
10627 Fitzroy Avenue
Tujunga CA 91042
Telephone: 818-273-9282
email: janbnorman@gmail.com

Attorney for Petitioner
JUAN GILBERTO MEDRANO

INDEX TO APPENDICES

FILED

OCT 21 2019

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUAN GILBERTO MEDRANO, Petitioner-Appellant, v. SCOTT FRAUENHEIM, Warden, Respondent-Appellee.	No. 17-56305 D.C. No. 2:16-cv-08292-FFM MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Frederick F. Mumm, Magistrate Judge, Presiding

Argued and Submitted April 12, 2019
Pasadena, California

Before: RAWLINSON and MURGUIA, Circuit Judges, and GILSTRAP,** District Judge.

Juan Gilberto Medrano (Petitioner) appeals the denial of his federal habeas petition filed in November, 2016.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable James Rodney Gilstrap, United States District Judge for the Eastern District of Texas, sitting by designation.

In November, 2015, Petitioner filed his first state habeas petition. While that petition was pending, a few days later, Petitioner filed a protective federal petition asserting the same claims as those in the state petition, and moved for a *Rhines*[1] stay. In December, 2015, the federal district court summarily dismissed the petition and denied the stay request because all claims were unexhausted. Petitioner's initial state petition was denied as untimely and on the merits in April, 2016. Petitioner's subsequent state petitions were also unsuccessful.

On November 7, 2016, Petitioner filed a second federal petition asserting the now exhausted claims. He contended that he was entitled to equitable tolling because, *inter alia*, he had limited access to the prison law library. The district court denied the second federal petition as untimely, finding that Petitioner raised no valid grounds for statutory tolling, and that Petitioner was not entitled to equitable tolling because he failed to demonstrate that extraordinary circumstances prevented him from timely filing his second habeas petition.

This Court reviews "the timeliness of the federal habeas petition *de novo*." *McMonagle v. Meyer*, 802 F.3d 1093, 1096 (9th Cir. 2015) (en banc) (citation and alterations omitted). Because Petitioner's conviction became final on February 10, 2015, he had until February 10, 2016, to file a timely federal habeas petition. *See*

[1] *See Rhines v. Weber,* 544 U.S. 269 (2005).

id. at 1097. Therefore, the November, 2016, petition was not timely, absent statutory[2] or equitable tolling. *See Espinoza-Matthews v. California*, 432 F.3d 1021, 1025 (9th Cir. 2005). "To be entitled to equitable tolling, a habeas petitioner must demonstrate two things: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing. . . ." *Williams v. Filson*, 908 F.3d 546, 558 (9th Cir. 2018) (citation and internal quotation marks omitted).

On appeal, Petitioner argues that the district court erred in finding that Petitioner's limited access to a library was not an extraordinary circumstance that warranted equitable tolling. However, normal restrictions on a prisoner's access to the law library does not constitute extraordinary circumstances standing in the way of timely filing a federal petition. *See Ramirez v. Yates*, 571 F.3d 993, 998 (9th Cir. 2009).

---

[2]To the extent that Petitioner contends that he is entitled to statutory tolling, the district court did not err in finding that Medrano was ineligible for statutory tolling. Petitioner's first state petition was denied as untimely, so it was not properly before the state court to toll the limitations period. *See Pace v. DiGuglielmo*, 544 U.S. 408, 417 (2005). The filings of his third and fourth state petitions after the statute of limitations expired could not toll the running of a limitations period that had already expired. *See Ford v. Gonzalez*, 683 F.3d 1230, 1237 n.4 (9th Cir. 2012).

Without having presented the argument to the district court,[3] Petitioner now asserts an additional basis for equitable tolling: that the denial of the *Rhines* stay request in connection with his 2015 federal petition was erroneous under our February, 2016, decision, *Mena v. Long*, 813 F.3d 907 (9th Cir. 2016) (explaining that a *Rhines* stay is available for completely unexhausted petitions).

Generally, we consider arguments not raised before the district court waived, unless one of the following exceptions applies:

> (1) there are exceptional circumstances why the issue was not raised in the trial court; (2) the new issue arises while the appeal is pending because of a change in the law; or (3) the issue presented is purely one of law and the opposing party will suffer no prejudice as a result of the failure to raise the issue in the trial court. Further exception may be made when plain error has occurred and an injustice might otherwise result.

Allen v. Ornoski, 435 F.3d 946, 960 (9th Cir. 2006) (citations and internal quotation marks omitted).

None of the exceptions provides a viable avenue for us to reach the *Mena* issue. Petitioner describes no exceptional circumstances that prevented him from raising the issue before either district court below. Even if *Mena* represented a clear change in the law, *Mena* was not decided while this appeal was pending. The

[3] Petitioner has not moved for reconsideration of the dismissal of his 2015 petition and the denial of the *Rhines* stay request under Federal Rule of Civil Procedure 60(b)(6).

determination of whether an extraordinary circumstance exists that warrants equitable tolling is "highly fact-dependent," *Sossa v. Diaz*, 729 F.3d 1225, 1229 (9th Cir. 2013), as is the inquiry into whether Petitioner sufficiently alleged good cause to merit a stay. *See King v. Ryan*, 564 F.3d 1133, 1138 (9th Cir. 2009). Although we have previously recognized that a district court's erroneous dismissal of a mixed petition is an extraordinary circumstance for tolling purposes, *see Jefferson v. Budge*, 419 F.3d 1013, 1016-17 (9th Cir. 2005), we have never done so for a completely unexhausted petition, where the equitable tolling issue was not presented to the district court. In any event, Petitioner has not demonstrated that the district court plainly erred when it denied the request in 2015, because the rule articulated in *Mena* was not "clear or obvious." *United States v. Anguiano-Morfin*, 713 F.3d 1208, 1211 (9th Cir. 2013).

AFFIRMED.

FILED

OCT 21 2019

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

Medrano v. Frauenheim, No. 17-56305

MURGUIA, Circuit Judge, dissenting:

Because Medrano is entitled to equitable tolling, I would reverse.

Adhering to Supreme Court guidance in *Pace v. DiGuglielmo*, 544 U.S. 408 (2005), Medrano diligently filed a protective federal habeas petition before AEDPA's one-year limitations period ran. That protective petition, however, was improperly dismissed according to now-controlling Circuit precedent. In *Mena v. Long*, 813 F.3d 907 (9th Cir. 2016)—which was published after the denial of Medrano's 2015 petition, but before the denial of his 2016 petition—our court explained that a district court has discretion to grant a *Rhines* stay even if all claims in a petition are unexhausted.

The unwarranted dismissal of a petitioner's earlier, timely filed federal habeas petition is an extraordinary circumstance that can support equitable tolling. *Jefferson v. Budge*, 419 F.3d 1013, 1017 (9th Cir. 2005). In light of *Mena*, we can conclude that the logic of *Jefferson* extends to the present context. At least two federal district courts in our Circuit agree. *See Torres v. Sullivan*, 2017 WL 2952925, *5 (C.D. Cal. May 25, 2017); *Briggs v. California*, 2017 WL 1806495, *3–5 (N.D. Cal. May 5, 2017).

Furthermore, because the question of whether dismissal of a protective federal habeas petition pre-*Mena* can constitute an extraordinary circumstance sufficient to warrant equitable tolling is "purely a question of law," *Allen v. Ornoski*, 435 F.3d 946, 960 (9th Cir. 2006), we could have and should have addressed it for the first time on appeal.

I respectfully dissent.

FILED

DEC 4 2019

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUAN GILBERTO MEDRANO, Petitioner-Appellant, v. SCOTT FRAUENHEIM, Warden, Respondent-Appellee.	No. 17-56305 D.C. No. 2:16-cv-08292-FFM Central District of California, Los Angeles ORDER

Before: RAWLINSON and MURGUIA, Circuit Judges, and GILSTRAP,* District Judge.

A majority of the panel has voted to deny the Petition for Rehearing. Judge Rawlinson voted and Judge Gilstrap recommended, to deny the Petition for Rehearing and the Petition for Rehearing En Banc. Judge Murguia voted to grant both the Petition for Rehearing and the Petition for Rehearing En Banc.

The full court has been advised of the Petition for Rehearing En Banc, and no judge of the court has requested a vote.

Appellant's Petition for Rehearing and Rehearing En Banc, filed November 4, 2019, is DENIED.

* The Honorable James Rodney Gilstrap, United States District Judge for the Eastern District of Texas, sitting by designation.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

JUAN GILBERTO MEDRANO, Petitioner, v. SCOTT FRAUENHEIM, Respondent.	No. CV 16-8292-FFM ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS AND DENYING CERTIFICATE OF APPEALABILITY

I. PROCEEDINGS

Petitioner, Juan Gilberto Medrano, a state prisoner in the custody of the California Department of Corrections, constructively filed a Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254 on November 1, 2016. On February 9, 2017, Respondent filed a motion to dismiss the Petition. On March 17, 2017, Petitioner filed an opposition to the motion to dismiss. On April 3, 2017, Respondent filed a reply. The parties have consented to have the undersigned conduct all proceedings in this case, including the resolution of all dispositive matters. The matter, thus, stands submitted and ready for decision.

/ / /

II. PROCEDURAL HISTORY

A Los Angeles County Superior Court jury found Petitioner guilty of two counts of second degree murder and one count of assault by means likely to produce great bodily injury (Cal. Penal Code §§ 187, 245). He was sentenced to thirty years to life, plus three years.

Petitioner then appealed his conviction. On August 21, 2014, the California Court of Appeal affirmed the judgment. Petitioner then filed a petition for review in the California Supreme Court, which denied review on November 12, 2014.

Over one year later, on November 16, 2015, Petitioner filed a petition for writ of habeas corpus in the Los Angeles Superior Court. While that petition was pending, Petitioner filed a federal habeas petition in this Court on November 18, 2015. (*See* Case No. 15-8970-DDP (FFM).) Therein, he asserted the same grounds for relief that he had asserted in the petition that he filed in the Los Angeles Superior Court. On December 18, 2015, this Court dismissed Petitioner's federal petition without prejudice because all of the claims were unexhausted and because they were pending before the Los Angeles Superior Court.

Subsequently, on April 28, 2016, the Los Angeles Superior Court denied Petitioner's state court habeas petition. In doing so, the Los Angeles Superior Court explained that, among other things, the petition was "untimely" and that "[P]etitioner ha[d] failed to explain and justify the significant delay in seeking habeas relief." (Lodged Doc. No. 12.)

Thereafter, on June 13, 2016, Petitioner filed a petition for writ of habeas corpus in the California Court of Appeal. On June 24, 2016, the California Court of Appeal denied the petition, noting that, among other things, "the issues [were] untimely raised without sufficient justification for delay. . . ." (Lodged Doc. No. 14.)

Petitioner then filed a petition for writ of habeas corpus in the California Supreme Court on August 22, 2016. On October 26, 2016, the California Supreme Court summarily denied the petition.

Petitioner then initiated this action.

III. DISCUSSION

A. Applicable Law

The current Petition was filed after the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") was signed into law and is, thus, subject to AEDPA's one-year limitation period, as set forth at 28 U.S.C. § 2244(d). *See Calderon v. U.S. Dist. Court (Beeler)*, 128 F.3d 1283, 1286 (9th Cir. 1997).[1] Title 28 U.S.C. § 2244(d) provides the following:

> (1) A one-year period of limitation shall apply to an application for a writ 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–
>
> (A) the date on which the judgment became final by conclusion of direct review or the expiration of the time for seeking such review.
>
> (B) the date on which the impediment to filing an application created 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;
>
> (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court

[1] *Beeler* was overruled on other grounds in *Calderon v. U.S. Dist. Court (Kelly)*, 163 F.3d 530, 540 (9th Cir. 1998) (en banc).

> and made retroactively applicable to cases on collateral review; or
>
> (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2244(d)(1).

B. The Petition Was Not Filed Within the Limitation Period

As a general rule, the limitation period begins running on the date that the petitioner's direct review becomes final. *Lopez v. Felker*, 536 F. Supp. 2d 1154, 1156 (C.D. Cal. 2008). Here, the California Supreme Court denied Petitioner's petition for review on November 12, 2014, and he did not file a petition of certiorari in the Supreme Court. Accordingly, Petitioner's conviction became final ninety days later, on February 10, 2015. *See Bowen v. Roe*, 188 F.3d 1157, 1159 (9th Cir. 1999). Therefore, Petitioner had until February 10, 2016 to file a timely federal petition. 28 U.S.C. § 2244(d)(1)(A). Petitioner, however, constructively filed the instant Petition on November 1, 2016, over nine months later. Consequently, the present action is untimely, absent statutory or equitable tolling of the limitations period.

1. Statutory Tolling

Title 28 U.S.C. § 2244(d)(2) provides that "[t]he time during which a properly filed application for state post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection."

The statute of limitations is not tolled between the date on which a judgment becomes final and the date on which the petitioner filed his first state collateral challenge because there is no case "pending." *Nino v. Galaza*, 183 F.3d 1003, 1006 (9th Cir. 1999). Once an application for post-conviction review commences, it is "pending" until a petitioner "complete[s] a full round of [state]

collateral review." *Delhomme v. Ramirez*, 340 F.3d 817, 819 (9th Cir. 2003) (citing *Biggs v. Duncan*, 339 F.3d 1045, 1048 (9th Cir. 2003)). "One full round" generally means that the statute of limitations is tolled while a petitioner is properly pursuing post-conviction relief, from the time a California prisoner files his first state habeas petition until the California Supreme Court rejects his final collateral challenge. *Carey v. Saffold*, 536 U.S. 214, 219-20, 122 S. Ct. 2134, 153 L. Ed. 2d 260 (2002); *see also Nino*, 183 F.3d at 1006; *Delhomme*, 340 F.3d at 819. The period tolled includes the time between a lower court decision and the filing of a new petition in a higher court, as long as the intervals between the filing of those petitions are "reasonable." *Delhomme*, 340 F.3d at 819 (citing *Biggs*, 339 F.3d at 1048 n.1).

Here, Petitioner is entitled to no statutory tolling. Although Petitioner filed a state habeas petition in the Los Angles Superior Court before the one-year limitations period expired, that petition did not statutorily toll the limitations period because the superior court found that the petition was untimely. Consequently, that petition was not properly filed. Moreover, that the superior court rejected Petitioner's state habeas petition for alternative reasons does not render his state petition timely. As the Ninth Circuit has explained, a state court's untimeliness determination renders a petition not "properly filed" within the meaning of 28 U.S.C. section 2244(d)(2), even if the state court alternatively denies a petition the merits. *Bonner v. Carey*, 425 F.3d 1145, 1148-49 (9th Cir. 2005), *amended by*, 439 F.3d 993 (9th Cir.). Thus, because Petitioner failed to properly file a collateral state court challenge to his conviction within one year of the date on which that conviction became final, statutory tolling is inapplicable to Petitioner's instant Petition.

Further, the state habeas petitions that Petitioner filed after the limitations period expired did not toll the limitations period because, by that time, there was no longer a limitations period to toll. *See Green v. White*, 223 F.3d 1001, 1003

(9th Cir. 2000). Regardless, Petitioner's second state habeas petition was, likewise, denied by the California Court of Appeal because it was untimely. Although Petitioner's third state habeas petition was denied without comment, it is presumed to have been denied for the same reasons as set forth in the court of appeal's prior order denying Petitioner's second state habeas petition. In other words, it, too, was denied as untimely. *Bonner*, 425 F.3d at 1148 n.13 (explaining that reviewing courts look to last reasoned state court decision denying habeas relief to determine basis for silent denials of subsequent state habeas petitions). Although Petitioner may believe that the state courts' timeliness rulings were incorrect, this Court is bound by the state court's interpretation of state law. *See Bradshaw v. Richey*, 546 U.S. 74, 76, 126 S. Ct. 602, 163 L. Ed. 2d 407 (2005) (*per curiam*) (stating that "a state court's interpretation of state law, including one announced on direct appeal of the challenged conviction, binds a federal court sitting in habeas corpus").

Moreover, Petitioner is not entitled to equitable tolling for any of the period during which his previously-filed federal habeas petition was pending. A pending federal habeas petition does not statutorily toll AEDPA's limitations period. *See Duncan v. Walker*, 533 U.S. 167, 180-81, 121 S. Ct. 2120, 150 L. Ed. 2d 251 (2001).

Accordingly, Petitioner is not entitled to any statutory tolling. Thus, absent equitable tolling, the petition is untimely.

2. Equitable Tolling

The AEDPA limitations period also may be subject to equitable tolling, if the petitioner shows that extraordinary circumstances beyond the petitioner's control prevented him from timely filing of a federal habeas petition *and* the petitioner has acted diligently in pursuing his rights. *Holland v. Florida*, 560 U.S. 631, 649, 130 S. Ct. 2549, 177 L. Ed. 2d 130 (2010); *Jefferson v. Budge*, 419 F.3d 1013, 1016 (9th Cir. 2005); *Spitsyn v. Moore*, 345 F.3d 796, 799 (9th Cir.

2003); *Fail*, 315 F.3d at 1061-62; *Miranda v. Castro*, 292 F.3d 1063, 1066 (9th Cir. 2002); *Frye v. Hickman*, 273 F.3d 1144, 1146 (9th Cir. 2001). The petitioner bears the burden of showing that equitable tolling is appropriate. *Miranda*, 292 F.3d at 1065.

Here, Petitioner cites several reasons why, in his opinion, equitable tolling of the limitations period is warranted. First, he maintains that the state habeas petition form provided inadequate space to allow him to explain why he delayed the filing of his initial state habeas petition. Specifically, he complains that the state form provided only two lines for him to explain his delay in filing his state habeas petition. As a result, according to Petitioner, he was unable to set forth a comprehensive explanation. Presumably, Petitioner believes that the state superior court would have reached a different conclusion regarding the timeliness of his initial state court habeas petition if he had he been provided more space explain his delay in filing it.

Second, Petitioner asserts that his delay in filing his initial state court habeas petition was justifiable due to the voluminous trial record in his case. According to Petitioner, the trial record spanned approximately 3,200 pages, through which Petitioner had to carefully sift in order to identify the constitutional errors alleged in his initial state habeas petition. As a result, he was unable to file his first state habeas petition in a manner that would have been deemed timely by the state court.

Third, Petitioner maintains that the difficulty in identifying and presenting the alleged constitutional errors at trial was compounded by the fact that he had limited access to the prison law library. According to Petitioner, he was denied access to the law library altogether during his first four months of incarceration. Moreover, he claims that, once he was transferred to another prison, he had, at best, limited access to the law library for a period of nearly two years because the "yard" in which he was housed did not have a law library. Although he was able

to use the law library in a different "yard" of the prison during this time, he was only able to do so when the prison was not in lockdown. And, even when he was able to access the law library, he was only able to do so for four hours at a time, two hours of which he had to spend in line waiting for legal materials. As explained below, Petitioner is not entitled to equitable tolling.

At bottom, Petitioner's arguments are not related to his ability to file a timely federal habeas petition; rather, they are directed at whether or not his state habeas petitions were timely filed (or whether any untimeliness in filing those petitions was excusable or justifiable). Indeed, one of Petitioner's equitable tolling arguments is directed at the adequacy of California's habeas petition form. In that argument, Petitioner claims that the state court could not properly determine if his initial state habeas petition was timely filed because the state habeas forms did not provide enough room to allow him to explain his delay in filing the petition. But that argument misses the mark. Put simply, his state habeas petitions were not properly filed under state law and, as such, they did not statutorily toll the AEDPA one-year limitations period. *See Robinson v. Lewis*, 795 F.3d 926, 929 (9th Cir. 2015).

The question of whether equitable tolling of the AEDPA limitations period is warranted presents a different question. In answering that question, this Court must determine whether an extraordinary circumstance beyond Petitioner's control prevented him from timely filing a federal habeas petition. *Holland*, 560 U.S. at 638. Whether or not Petitioner was able to timely file his state habeas petitions has little, if any, bearing on that question.

Moreover, the fact that Petitioner filed a state habeas petition, albeit an untimely one under state law, as well as the fact that he filed an unexhausted federal habeas petition within the one-year federal limitations period, strongly indicates -- if not conclusively demonstrates -- that no extraordinary circumstance prevented him from timely filing a federal habeas petition. *See Gaston v. Bock*,

417 F.3d 1030, 1034–35 (9th Cir. 2005) (holding that district court did not err in denying petitioner equitable tolling based on alleged mental impairment where petitioner was able to file state habeas petitions during time period for which he sought equitable tolling). What is more, there was nothing to prevent Petitioner from filing his first state habeas petition in the California Supreme Court, as opposed to filing it in the Los Angeles Superior Court. Indeed, "[r]ather than requiring a petitioner whose habeas petition has been dismissed to appeal that decision to a higher court, California law provides that an original petition may be filed at each level of the California court system." *Robinson*, 795 F.3d at 929.

Regardless, none of the reasons cited by Petitioner warrants equitable tolling. First, Petitioner's assertion about the purported inadequacy of the state habeas petition form is meritless. Petitioner claims that he was precluded from providing a more fulsome explanation regarding the delay in filing his initial state habeas petition because the portion of the petition calling for explanations did not state that petitioners are permitted to attach additional pages to their petitions. On the first page of the state habeas petition form, however, the following language appears: "Answer all applicable questions in the proper spaces. *If you need additional space, add an extra page* and indicate that your answer is 'continued on additional page.'" (Lodged Doc. No. 12 (*emphasis added*).)[2]

---

[2] Petitioner also contends that equitable tolling is warranted because the state habeas petition form was confusing. At best, this contention amounts to a claim that Petitioner lacked the legal sophistication to timely file his state habeas petition. Aside from the fact that the timeliness of Petitioner's state habeas petitions is not relevant to the Court's equitable tolling analysis (*see supra*), petitioner's purported lack of legal sophistication does not warrant equitable tolling. *See Rasberry v. Garcia*, 448 F.3d 1150, 1154 (9th Cir. 2006) (stating that "a *pro se* petitioner's lack of legal sophistication is not, by itself, an extraordinary circumstance warranting equitable tolling"); *Waldron-Ramsey v. Pacholke*, 556 F.3d 1008, 1013 n.4 (9th Cir. 2009) ("[W]e have held that a *pro se* petitioner's

(continued...)

Second, there is no merit to Petitioner's allegations regarding the purportedly voluminous trial court record. Although Petitioner asserts that the record spanned 3,200 pages, it is, in truth, approximately half that size. (*See* Lodged Doc. Nos. 1-4). What is more, even if the record, in fact, were 3,200 pages, its length, alone, would not justify equitable tolling. *See Whelan v. Harrington*, 2012 WL 70600466, *5-6 (C.D. Cal. June 18, 2012) (length of petitioner's trial record, which spanned 4,963 pages, did not excuse 80-day delay between filings of state habeas petitions where claims in petition were discoverable from trial record and ultimately were rejected by state court without need for evidentiary hearing); *compare with, Maxwell v. Roe*, 628 F.3d 486, 496-97 (9th Cir. 2010) (statutory tolling appropriate despite prolonged delay between filings of state habeas petitions where record of "unique[ly] com[plex]" case involving ten counts of capital murder spanned 20,000 pages, gave rise to seven-year appeal process, generated order to show cause by state supreme court on issue raised in petition, and resulted in two-year evidentiary hearing regarding petitioner's state habeas petition). Although Petitioner cannot be faulted for carefully sifting through his trial record, there is no reason to believe that doing constituted an extraordinary circumstance. And, indeed, after his conviction, Petitioner had well-over two years to sift through the trial record before his conviction even became final.

Third, Petitioner is not entitled to equitable tolling with respect to his purported lack of access to the prison law library. As for the first four months of his incarceration, when he claims to have been denied all access to the prison law library, equitable tolling is not warranted because his purported lack of access to the law library could not have impacted his ability to file a timely federal habeas

---

(...continued)
confusion or ignorance of the law is not, itself, a circumstance warranting equitable tolling[.]") (citation omitted).

petition. Petitioner was convicted on September 26, 2012. His conviction did not become final until February 10, 2015 -- in other words, the statute of limitations had not even begun to run during Petitioner's first four months in prison. Thus, whether or not Petitioner had access to the prison law library during his first four months of incarceration had no impact on his ability to file a timely federal habeas petition.

Moreover, Petitioner's purported limited access to the prison law library for an undefined two-year period after being transferred was not an extraordinary circumstance warranting equitable tolling.[3] In general, a petitioner is not entitled to equitable tolling simply because he remained in administrative segregation and had limited access to law library. *See Ramirez*, 571 F.3d at 998; *but see id.* at 998 (noting that "a complete lack of access to a legal file may constitute an extraordinary circumstance").

Notwithstanding this general rule, the Ninth Circuit has held that equitable tolling may be appropriate where a petitioner held in administrative segregation is denied access to his legal materials, despite diligent efforts to obtain those materials. *See Espinoza-Matthews v. California*, 432 F.3d 1021, 1028 (9th Cir. 2005). Thus, in *Espinoza-Matthews,* the Ninth Circuit held that equitable tolling was warranted where the petitioner was repeatedly denied access to requested legal materials while confined in protective administrative segregation for eleven months. *Id.* In reaching this holding, the Ninth Circuit found significant that,

---

[3] Petitioner does not indicate when he was transferred from his original place of incarceration, other than noting that the transfer occurred sometime afer his first four months of incarceration. If Petitioner was transferred immediately after that four-month period ended, then he would not be entitled to equitable tolling for the reasons stated above. Indeed, under that scenario, Petitioner's access to the law library was limited only until sometime around March of 2015, which would have left him approximately eleven months to prepare his federal habeas petition.

once the petitioner's files were returned to him, he had only one month in which to file a timely petition.

Here, Petitioner does not even allege the dates during which his access to the law library was limited, other than to note that it was sometime after his first four months of incarceration. Based on that fact alone, Petitioner has failed to meet his burden to show that equitable tolling is warranted. And, although he contends that the prison was on lockdown during some of that time, he does not indicate when or for how long the prison purportedly was on lockdown. Putting that fact aside, Petitioner also has failed to provide any documentary proof showing that he sought legal materials from the prison library while he supposedly was denied access to it. Nor has he shown that the prison in which he is incarcerated lacked a system to deliver legal materials to prisoners who were unable to, or not permitted to, visit the prison library. Given this dearth of evidentiary support, any supposed lockdown cannot justify equitable tolling of the statute of limitations.

Moreover, unlike the petitioner in *Espinoza-Matthews*, who was confined in protective administrative segregation for eleven months and, therefore, had no access to the law library during that time, Petitioner concedes that he had some access to the law library throughout the undefined two-year period. Although he complains that he had to share the library with inmates from another "yard" and that he was required to wait in line to use the library, those circumstances are far from extraordinary. Thus, Petitioner's purported lack of access to (or limited access to) the law library does not warrant equitable tolling of the limitations period.

Petitioner failed to file his federal habeas petition within one year of the date on which the AEDPA's one-year limitations period began to run. Neither statutory nor equitable tolling brings the Petition within the limitations period. Accordingly, the Petition is time-barred.

IV. CERTIFICATE OF APPEALABILITY

Under Rule 11(a) of the Rules Governing § 2254 Cases, a court must grant or deny a certificate of appealability ("COA") when it denies a state habeas petition. See also 28 U.S.C. § 2253(c).

An appeal may not be taken from the denial by a district judge of a habeas petition in which the detention complained of arises out of process issued by a state court "unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c)." Fed. R. App. P. 22(b). "A certificate of appealability may issue . . . only if . . . [there is] a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

Here, the Court has concluded that the Petition is time-barred. Thus, the Court's determination of whether a certificate of appealability ("COA") should issue is governed by the Supreme Court's decision in *Slack v. McDaniel*, 529 U.S. 473, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000). In *Slack*, the Supreme Court held that "[w]hen the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when . . . 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." 529 U.S. at 484. As the Supreme Court further explained:

> Section 2253 mandates that both showings be made before the court of appeals may entertain the appeal. Each component of the § 2253(c) showing is part of a threshold inquiry, and a court may find that it can dispose of the application in a fair and prompt manner if it proceeds first to resolve the issue whose answer is more apparent from the record and arguments.

Id. at 485.

The Court finds that the requisite showing has not been made that jurists of reason would find it debatable whether the Court is correct in ruling that the Petition is time-barred.

THEREFORE, pursuant to 28 U.S.C. § 2253, a certificate of appealability is denied.

V. ORDER

For the foregoing reasons, Respondent's motion to dismiss is **granted**. Accordingly, IT IS HEREBY ORDERED that Judgment be entered denying and dismissing the Petition with prejudice. A certificate of appealability is **denied**.

DATED: July 21, 2017

/ s / FREDERICK F. MUMM
FREDERICK F. MUMM
United States Magistrate Judge

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JUAN GILBERTO MEDRANO, Petitioner, v. SCOTT FRAUENHEIM, Respondent.	No. CV 15-8970 DDP (FFM) ORDER RE SUMMARY DISMISSAL OF ACTION WITHOUT PREJUDICE

On or about November 11, 2015, petitioner constructively[1] filed a Petition for Writ of Habeas Corpus by a Person in State Custody ("Petition"). The Petition raises five claims, all of which are presently pending before the California Supreme Court on a petition for writ of habeas corpus. Petitioner did not raise any of these claims on direct appeal.

As a matter of comity, a federal court will not entertain a habeas corpus petition unless the petitioner has exhausted the available state judicial remedies on every ground presented in the petition. *Rose v. Lundy*, 455 U.S. 509, 518-22, 102 S. Ct. 1198, 71 L.

[1] A *pro se* prisoner's relevant filings may be construed as filed on the date they were submitted to prison authorities for mailing, under the prison "mailbox rule" of *Houston v. Lack*, 487 U.S. 266, 108 S. Ct. 2379 (1988). In this case, petitioner has not attached a proof of service to the Petition. However, the Petition is dated November 11, 2015. Therefore, the Court will assume without deciding that the Petition was constructively filed on that date.

Ed. 2d 379 (1982). The habeas statute now explicitly provides that a habeas petition brought by a person in state custody "shall not be granted unless it appears that -- (A) the applicant has exhausted the remedies available in the courts of the State; or (B)(i) there is an absence of available State corrective process; or (ii) circumstances exist that render such process ineffective to protect the rights of the applicant." 28 U.S.C. § 2254(b)(1). Moreover, if the exhaustion requirement is to be waived, it must be waived expressly by the State, through counsel. *See* 28 U.S.C. § 2254(b)(3).

Exhaustion requires that the prisoner's contentions be fairly presented to the state courts, and be disposed of on the merits by the highest court of the state. *Carothers v. Rhay*, 594 F.2d 225, 228 (9th Cir. 1979). A claim has not been fairly presented unless the prisoner has described in the state court proceedings both the operative facts and the federal legal theory on which his claim is based. *See Duncan v. Henry*, 513 U.S. 364, 365-66 (1995); *Picard v. Connor*, 404 U.S. 270, 275-78 (1971); *Johnson v. Zenon*, 88 F.3d 828, 830 (9th Cir. 1996). A federal court may raise the failure to exhaust issues *sua sponte* and may summarily dismiss on that ground. *See Stone v. San Francisco*, 968 F.2d 850, 856 (9th Cir. 1992); *Cartwright v. Cupp*, 650 F.2d 1103, 1104 (9th Cir. 1981) (*per curiam*); *see also Granberry v. Greer*, 481 U.S. 129, 134-35 (1987).

Petitioner has the burden of demonstrating that he has exhausted available state remedies. *See, e.g., Brown v. Cuyler*, 669 F.2d 155, 158 (3rd Cir. 1982). Here, it plainly appears from the face of the Petition that petitioner cannot meet this burden with respect to his claims. Petitioner alleges that the California Supreme Court has not yet ruled on any of his claims. (Petition at ¶¶ 3-9.)

Because the California Supreme Court has not yet ruled on any of petitioner's claims, the Petition is unexhausted.

If it were clear that the California Supreme Court would hold that petitioner's unexhausted federal claims were procedurally barred under state law, then the exhaustion requirement would be satisfied. In that event, although the exhaustion impediment to consideration of petitioner's claim on the merits would be removed, federal habeas

review of the claim would still be barred unless petitioner could demonstrate "cause" for the default and "actual prejudice" as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims would result in a "fundamental miscarriage of justice." *See Coleman v. Thompson*, 501 U.S. 722, 750, 111 S. Ct. 2546, 115 L. Ed. 2d 640 (1991). However, it is not "clear" here that the California Supreme Court will hold that petitioner's federal claim is procedurally barred under state law. *See, e.g., In re Harris*, 5 Cal. 4th 813, 825 (1993) (granting habeas relief where petitioner claimed sentencing error, even though the alleged sentencing error could have been raised on direct appeal); *People v. Sorensen*, 111 Cal. App. 2d 404, 405 (1952) (noting that claims that fundamental constitutional rights have been violated may be raised by state habeas petition). On the contrary, petitioner asserts that the claims now pending before the California Supreme Court were unavailable to him on direct review.

The Court therefore concludes that this is not an appropriate case for invocation of either exception to the exhaustion requirement regarding the existence of an effective state corrective process.

Therefore, the Petition is subject to dismissal.

Petitioner has also requested this Court to stay these proceedings while he pursues his claims before the California Supreme Court. However, a District Court cannot stay a completely unexhausted petition. *See, e.g., Coleman v. Thompson,* 501 U.S. 722, 731 (1991) ("[t]his Court has long held that a state prisoner's federal habeas petition should be dismissed if the prisoner has not exhausted available state remedies as to any of his federal claims"); *see also Raspberry v. Garcia*, 448 F.3d 1150, 1154 (9th Cir. 2006) ("We decline to extend [the stay and abeyance] rule [of *Rhines v. Weber*, 544 U.S. 269, 275-76 (2005)] to the situation where the original habeas petition contained only unexhausted claims, but the record shows that there were exhausted claims that could have been included. . . . Once a district court determines that a habeas petition contains only unexhausted claims, it need not inquire further as to the petitioner's intentions. Instead, it may simply dismiss the habeas petition for failure to exhaust."). In appropriate

circumstances a court may stay a fully exhausted petition or a mixed petition containing both exhausted and unexhausted claims. The instant Petition is neither fully exhausted nor mixed. Therefore, petitioner's request for a stay is denied.

IT IS THEREFORE ORDERED that this action be summarily dismissed without prejudice, pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts.

LET JUDGEMENT BE ENTERED ACCORDINGLY.

Dated: December 18, 2015

DEAN D. PREGERSON
United States District Judge

Presented by:

/S/ FREDERICK F. MUMM
FREDERICK F. MUMM
United States Magistrate Judge

JUAN GILBERTO MEDRANO
#AN6048
PLEASANT VALLEY STATE PRISON
P.O. BOX 8500
COALINGA, CA. 93210
IN PRO PER

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

CV15-08970 DDP (FFM)

JUAN G. MEDRANO	CJC (FMO)
PETITIONER	MOTION TO STAY AND
V.	ABEY PETITION; MEMORANDUM
SCOTT FRAUENHEIM	OF POINTS AND AUTHORITIES
RESPONDENT	DECLARATION OF PETITIONER
	(NO HEARING REQUIRED)

TO: THE HONORABLE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA:

PETITIONER IN PROPIA PERSONA, FILES THIS MOTION TO STAY AND ABEY THE FEDERAL PETITION IN ORDER TO SECURE FEDERAL JURISDICTION WITHIN THE STATUTES OF LIMITATIONS

THIS MOTION IS BASED UPON THE ATTACHED MEMORANDUM OF POINTS AND AUTHORITIES, THE ATTACHED DECLARATION OF PETITIONER AND ALL FILES AND RECORDS IN THIS CASE AND SUCH FURTHER INFORMATION AS MAY BE PROVIDED TO THE COURT WITH RESPECT TO THIS APPLICATION.

DATED: NOVEMBER 9 2015

RESPECTFULLY SUBMITTED

BY: Juan J. Medrano

IN PROPIA PERSONA

MEMORANDUM OF POINTS AND AUTHORITIES

THE RHINES' DECISION REQUIRES THIS COURT TO STAY PETITIONER'S PETITION

A. PETITIONER HEREBY APPLIES FOR A STAY IN ORDER TO SECURE FEDERAL JURISDICTION WITHIN THE STATUTES OF LIMITATIONS.

RHINES V. WEBER, 161 L. Ed. 2d 440, U.S., 125 S.CT. 1528, 1535 (2005), PERMITS THIS COURT TO STAY THE INSTANT PETITION WHILE PETITIONER EXHAUSTS HIS CLAIM IN THE STATE COURTS.

RHINES V. WEBER, 161 L. Ed. 2d 440, U.S., 125 S.CT. 1528, 1535 (2005), PERMITS THIS COURT TO STAY THE INSTANT PETITION WHILE PETITIONER EXHAUST HIS CLAIMS IN THE STATE COURTS.

RHINES ENDORSES THE STAY PROCEDURE, RHINES RESOLVED A SPLIT IN THE DISTRICT COURTS CONCERNING WHETHER THE DISTRICT COURT COULD STAY A FEDERAL PETITION WHILE THE PETITIONER EXHAUSTS STATE REMEDIES. RHINES DETERMINED THAT A FEDERAL DISTRICT COURT HAS DISCRETION TO STAY THE MIXED PETITION TO ALLOW THE PETITIONER TO PRESENT HIS UNEXHAUSTED CLAIMS TO THE STATE COURT IN THE FIRST INSTANCE, AND THEN TO RETURN TO FEDERAL COURT FOR REVIEW OF HIS PERFECTED PETITION. SEE RHINES V. WEBER, AT ——, 161 L. Ed. 2d 440, 125 S. CT. 1528.

THE UNITED STATES SUPREME COURT ENDORSES THE STAY AND ABEY PROCEDURE WHERE A PETITIONER FILES AN UNEXHAUSTED FEDERAL PETITION AND THEN APPLIES FOR A STAY IN ORDER TO SECURE FEDERAL JURISDICTION WITHIN THE

STATUTES OF LIMITATIONS. SEE PACE V. DIGUGLIELMO, 125 S.CT. 1807, 1813-1814; 161 L.ED. 2d 669; 2005 U.S. LEXIS 3705 (2005) [WHERE THE UNITED STATES SUPREME COURT STATED, "PRISONER SEEKING STATE POSTCONVICTION RELIEF MIGHT... ..[FILE] A "PROTECTIVE" PETITION IN FEDERAL COURT AND [ASK] THE FEDERAL COURT TO STAY AND ABEY THE FEDERAL HABEAS PROCEEDINGS UNTIL STATE REMEDIES ARE EXHAUSTED."]

SEE ALSO, RHINES V. WEBER, AT ___, 161 L.ED. 2d 440, 125 S.CT. 1528,

PETITIONER'S SHOWING OF GOOD CAUSE REQUIRES THIS COURT TO STAY HIS FEDERAL PETITION WHILE HE EXHAUSTS HIS STATE CLAIMS.

HERE, PETITIONER HAS BEEN DILIGENTLY PURSUING HIS STATE COURT REMEDIES. WHAT CONSTITUTES GOOD CAUSE HAS NOT BEEN PRECISELY DEFINED EXCEPT TO INDICATE AT THE OTHER END THAT PETITION MUST NOT HAVE ENGAGED IN PURPOSEFUL DILATORY TACTICS, RHINES V. WEBER, 161 L.ED. 2d 440, U.S. , 125 S.CT. 1528, 1535 (2005), AND THAT "EXTRAORDINARY CIRCUMSTANCES" NEED NOT BE FOUND. JACKSON V. ROE, 425 F.3d 654, 661-662 (9TH CIR. 2005) SEE RHINES, SUPRA, AT 1536 (STEVENS, J. CONCURRING) (THE "GOOD CAUSE" REQUIREMENT SHOULD NOT BE READ "TO IMPOSE THE SORT OF STRICT AND INFLEXIBLE REQUIREMENT THAT WOULD TRAP THE UNWARY PRO SE PRISONER.") (INTERNAL CITATION OMITTED); SEE ALSO, id., (SOUTER, J., CONCURRING) (PRO SE HABEAS PETITIONERS DO NOT COME WELL TRAINED TO ADDRESS TRICKY EXHAUSTION DETERMINATIONS).

IN THE ABSENCE OF FACTORS WARRANTING A DENIAL

OF A STAY, A COURT WILL ABUSE ITS DISCRETION IF THE STAY IS NOT GRANTED. JACKSON, SUPRA, AT 425 F. 3d AT 661.

FURTHERMORE, GOOD CAUSE UNDER RHINES SHOULD NOT BE SO STRICT A STANDARD AS TO REQUIRE A SHOWING OF SOME EXTREME AND UNUSUAL EVENT BEYOND THE CONTROL OF THE DEFENDANT. SEE PACE V. DIGUGLIELMO, 125 S. CT. 1807, 1813-14, 161 L. Ed. 2d 669 (2005)[A PETITIONERS' CONFUSION OVER WHETHER OR NOT HIS PETITION WOULD BE TIMELY FILED WAS "GOOD CAUSE" FOR THE PETITIONER TO FILE HIS UNEXHAUSTED PETITION IN THE FEDERAL COURT].

PETITIONER HAS GOOD CAUSE FOR HIS APPLICATION FOR A STAY IN ORDER TO SECURE FEDERAL JURISDICTION WITHIN THE STATUTES OF LIMITATIONS WHERE "PETITIONER SEEKS POSTCONVICTION RELIEF AND FILES A "PROTECTIVE" PETITION IN FEDERAL COURT AND [ASKS] THE FEDERAL COURT TO STAY AND ABEY THE FEDERAL HABEAS PROCEEDINGS UNTIL STATE REMEDIES ARE EXHAUSTED," HIS UNEXHAUSTED CLAIMS ARE POTENTIALLY MERITORIOUS, AND HAS NOT ENGAGED IN INTENTIONALLY DILATORY TACTICS. THEREFORE, THIS COURT SHOULD STAY HIS FEDERAL PETITION. PACE V. DIGUGLIELMO, AT P. 1813

CONCLUSION

PETITIONER HAS TIMELY FILED HIS FEDERAL PETITION AND HAS BEEN TIMELY AND DILIGENTLY PURSUING STATE COURT EXHAUSTION ON ALL CLAIMS STATED THEREIN.

THEREFORE, PETITIONER REQUEST THIS COURT TO STAY AND ABEY HIS FEDERAL PETITION PENDING THE RESOLUTION OF CLAIMS STATED THEREIN THE CALIFORNIA COURTS.

DATED: NOVEMBER 11, 2015

RESPECTFULLY SUBMITTED

Juan G. Medrano

JUAN G. MEDRANO

IN PRO PER

PROOF OF SERVICE BY MAIL

I, JUAN G. MEDRANO, DECLARE: I AM AT LEAST 18 YEARS OF AGE, AND A PARTY TO THE ATTACHED HEREIN CAUSE OF ACTION. MY MAILING ADDRESS IS: PLEASANT VALLEY STATE PRISON, POST OFFICE BOX 8500, CELL B-2-104, COALINGA, CALIFORNIA 93210-8500.

ON NOVEMBER 11, 2015, I DELIVERED TO PRISON OFFICIALS AT PLEASANT VALLEY STATE PRISON AT THE ABOVE ADDRESS THE FOLLOWING DOCUMENTS FOR MAILING VIA THE UNITED STATES MAIL

1. MOTION TO STAY AND ABEY PETITION
2. PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY
3. CDCR 22 REQUEST FOR SERVICE FORM EXPLAINING WHY COPIES COULD NOT BE MADE.

IN A SEALED ENVELOPE WITH POSTAGE FULLY PREPAID, ADDRESSED TO:

CLERK OF THE UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA
UNITED STATES COURTHOUSE
ATTN: INTAKE/DOCKET SECTION
312 NORTH SPRING STREET
LOS ANGELES, CALIFORNIA 90012

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED THIS 11TH DAY OF NOVEMBER, 2015 AT COALINGA, CA.

Juan G. Medrano

DECLARANT/PETITIONER IN PRO PER

PROOF OF SERVICE

STATE OF CALIFORNIA)
) SS.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 10627 Fitzroy Avenue, Tujunga, California 91042.

On March 3, 2020, I served the within entitled document described as MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS, PETITION FOR WRIT OF CERTIORARI and APPENDIX TO PETITION FOR WRIT OF CERTIORARI on the interested parties in said action by email from janbnorman@gmail.com and placing a true copy thereof in the United States mail enclosed in a sealed envelope with postage prepaid, addressed as follows:

Jonathan M. Krauss
Deputy Attorney General
Office of the Attorney General
300 South Spring Street, Suite 1702
Los Angeles, California 90013
email: Jonathan.Krauss@doj.ca.gov

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 3, 2020, at Tujunga, California.

By: */s/ Jan B. Norman*
JAN B. NORMAN