

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 7 2020

FOR THE NINTH CIRCUIT

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

ROGELIO MAY RUIZ,

No. 19-15439

Petitioner-Appellant,

D.C. No. 3:17-cv-00338-CRB

v.

MEMORANDUM*

DAVID BAUGHMAN, Warden,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of California
Charles R. Breyer, District Judge, Presiding

Submitted February 12, 2020**
San Francisco, California

Before: GOULD and MURGUIA, Circuit Judges, and FEINERMAN,** District Judge.

Rogelio Ruiz appeals the district court's dismissal of his 28 U.S.C. § 2254 habeas corpus petition for failure to comply with the statute of limitations, 28

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

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

*** The Honorable Gary Feinerman, United States District Judge for the Northern District of Illinois, sitting by designation.

U.S.C. § 2244(d). We have jurisdiction under 28 U.S.C. §§ 1291 and 2253, and we affirm.

We review de novo the district court's decision to dismiss a § 2254 habeas petition as untimely. *See Nedds v. Calderon*, 678 F.3d 777, 780 (9th Cir. 2012).

Ruiz invokes equitable tolling to avoid dismissal on limitations grounds. To successfully invoke equitable tolling, Ruiz must show “(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing.” *Holland v. Florida*, 560 U.S. 631, 649 (2010) (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)). Moreover, because § 2244(d) “does not permit the reinitiation of [a] [statute of] limitations period that has ended,” *Ferguson v. Palmateer*, 321 F.3d 820, 823 (9th Cir. 2003), Ruiz must have qualified for at least some equitable tolling before his limitations period was set to expire on September 18, 2008—and tolling must have accrued, without ever expiring before a tolled deadline, for a total of 3,018 days.

For the reasons set forth in the district court's thorough opinion, *see Ruiz v. Baughman*, Case No. 3:17-cv-00338-CRB, 2019 WL 978767, at *2–8 (N.D. Cal. Feb. 28, 2019), Ruiz's equitable tolling argument fails. Moreover, contrary to Ruiz's post-argument submission, our recent decision in *Milam v. Harrington*, 953 F.3d 1128 (9th Cir. 2020), does not warrant a remand for the district court to consider whether his mental impairment was the “but-for” cause of his untimely

petition. Unlike in *Milam*, where the district court “never addressed either whether [the petitioner] was actually impaired or . . . whether that impairment caused the untimely federal filing,” *id.* at 1133, the district court here fully considered Ruiz’s mental impairment argument and correctly found it wanting. *See Ruiz*, 2019 WL 978767, at *6–7.

AFFIRMED.

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No. 19-15439

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Northern District of California,
San Francisco

ORDER

Before: Peter L. Shaw, Appellate Commissioner.

On June 10, 2020, this court received appellant's pro se motion requesting an interpreter and for "continued or reassigned" counsel (Docket Entry No. 33), which the court served electronically on appointed counsel, Assistant Federal Public Defenders Joyce Leavitt (510) 637-3515 and Lisa Ma (510) 637-3500, Federal Public Defender's Office, 1301 Clay Street, Suite 1350N, Oakland, CA 94612. Because appellant is represented by counsel, only counsel may file motions. This court therefore declines to entertain the pro se submission.

Within 14 days after the date of this order, counsel shall confer with appellant and file in this court a response to appellant's pro se submission.

The Clerk shall serve this order on counsel and appellant individually:

Rogelio May Ruiz, CDCR No. F59761, California State Prison – Sacramento, P.O. Box 290066, Represa, CA 95671.

Briefing in this case is complete.

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San Francisco

ORDER

Before: GOULD and MURGUIA, Circuit Judges, and FEINERMAN,* District Judge.

The motion of appellant's appointed counsel, the Office of the Federal Public Defender, to be relieved as appellant's counsel of record (Docket Entry No. 37) is granted. *See* 9th Cir. R. 4-1(e).

Appellant's motions for appointment of new counsel and an interpreter (Docket Entry Nos. 39, 40) are denied.

We sua sponte grant appellant an extension to time to file a pro se petition for panel rehearing or rehearing en banc from this court's July 7, 2020, decision. Any petition for panel rehearing or rehearing en banc must be filed within 14 days of the date of this order.

* The Honorable Gary Feinerman, United States District Judge for the Northern District of Illinois, sitting by designation.

The Clerk will serve a copy of this order on appellant's counsel as well as on appellant Rogelio May Ruiz individually at: CDCR #F59761, California State Prison – Sacramento, P.O. Box 290066, Represa, CA 95671.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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OCT 2 2020

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Northern District of California,
San Francisco

ORDER

Before: GOULD and MURGUIA, Circuit Judges, and FEINERMAN,* District Judge.

Petitioner-Appellant's motion for reconsideration (Docket 46) is DENIED.

* The Honorable Gary Feinerman, United States District Judge for the Northern District of Illinois, sitting by designation.

UNITED STATES COURT OF APPEALS
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AUG 31 2020

MOLLY C. DWYER, CLERK
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Before: GOULD and MURGUIA, Circuit Judges, and FEINERMAN,* District Judge.

Appellant's pro se motion for appointment of counsel is DENIED (Doc. 43).

Anexo esta pagina para mayor informacion
no tengo copias del proceso de apelacion por parte de
abogado Steve G. Kalas porque fueron robados por
yo R. Ehler en ~~20~~ 5 de mayo 2019 -
espero pronta respuesta -
gracias -

* The Honorable Gary Feinerman, United States District Judge for the Northern District of Illinois, sitting by designation.

UNITED STATES COURT OF APPEALS
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ORDER

The court is of the unanimous opinion that the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument. This case shall be submitted on the briefs and record, without oral argument, on February 12, 2020 in San Francisco, California. Fed. R. App. P. 34(a)(2).

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Allison Fung
Deputy Clerk
Ninth Circuit Rule 27-7

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San Francisco

ORDER

Before: Peter L. Shaw, Appellate Commissioner.

The court has received the response to the July 2, 2020 order, confirming that appellant's counsel have conferred with the appellant in connection with the pro se filing docketed on June 10. The response (Docket Entry No. 36) is satisfactory.