

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUL 22 2021

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

SHIKEB SADDOZAI,

No. 20-15645

Petitioner-Appellant,

v.

D.C. No. 5:18-cv-07337-EJD
Northern District of California,
San Jose

XAVIER BECERRA; WILLIAM J.
SULLIVAN,

ORDER

Respondents-Appellees.

Before: CANBY and TALLMAN, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 13) is denied because 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).

Any pending motions are denied as moot.

DENIED.

UNITED STATES COURT OF APPEALS

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

SHIKEB SADDOZAI,

Petitioner-Appellant,

v.

XAVIER BECERRA; WILLIAM J.
SULLIVAN,

Respondents-Appellees.

No. 20-15645

D.C. No. 5:18-cv-07337-EJD
Northern District of California,
San Jose

ORDER

Appellant's motion for an extension of time to file a request for a certificate of appealability (Docket Entry No. 11) is granted. Any request for a certificate of appealability is due by February 2, 2021.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Nitzana Alzalde
Deputy Clerk
Ninth Circuit Rule 27-7

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHIKEB SADDOZAI,

Petitioner,

v.

XAVIER BECERRA, et al.,

Respondents.

Case No. 18-07337 EJD (PR)

**ORDER GRANTING MOTION TO
DISMISS; DENYING MOTION FOR
RECONSIDERATION; DENYING
CERTIFICATE OF APPEALABILITY**

(Docket Nos. 23, 37)

Petitioner filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging his state conviction. Respondent filed a motion to dismiss the petition as untimely. (Docket No. 23 hereafter “Mot.”) Petitioner filed an opposition, (Docket No. 24), and Respondent filed a reply, (Docket No. 30).

After the matter became submitted, Petitioner filed another motion for reconsideration of the Court’s previous denial of his motion for appointment of counsel. (Docket No. 37.) That motion is DENIED for the same reasons as before, (Docket No. 33), and as moot.

I. BACKGROUND

On August 18, 2015, Petitioner pleaded no contest to felony sexual penetration,

1 kidnapping, and false imprisonment in San Mateo County Superior Court. (Mot. at 2; Ex.
2 1 at 2.¹) On October 9, 2015, Petitioner was sentenced to 32 months in state prison. (Id.
3 Ex. 1 at 2 & Attach. A at 1.) Petitioner did not appeal his conviction.²

4 It now appears that Petitioner is not in custody for the conviction that he challenges
5 in the present petition. (Reply at 2, citing Pet. at 1.) Respondent points out that the
6 sentence imposed was for a two-year, eight-month term (case number SC078812), and
7 Petitioner filed the habeas action over three years after that sentence was imposed. (Id.) In
8 his petition for review filed in the California Supreme Court, Petitioner indicated that he
9 was returned to custody on February 8, 2016, on new allegations. (Mot., Ex. 3 at 3.) He is
10 now in state custody for a new conviction out of San Mateo County Superior Court (case
11 number 16-NF-001414A), since June 14, 2017, when the court sentenced him to 32 years
12 to life in prison. (Reply, Ex. 5.)

13 On February 6, 2018, Petitioner filed petitions for writ of habeas corpus in the San
14 Mateo County Superior Court, which were denied as untimely and failing to establish a
15 *prima facie* case for relief on July 11, 2018. (Ex. 1 at Attach. A.)

16 On August 1, 2018, Petitioner filed a petition for writ of habeas corpus in the
17 California Court of Appeal, which was denied with citations to In re Clark, 5 Cal.4th 750,
18 782-799 (1993), In re Robbins, 18 Cal.4th 770, 780 (1998), In re Swain, 34 Cal.2d 300,
19 303-304 (1949), and People v. Duvall, 9 Cal.4th 464, 474 (1995), on August 3, 2018.
20 (Exs. 1 & 2.)

21 On August 22, 2018, Petitioner filed a petition for review of the denial of his habeas
22 petition in the California Supreme Court, which was denied on October 10, 2018. (Exs. 3
23 & 4.)

24 _____
25 ¹ All references to exhibits are to the exhibits submitted with Respondent's motion to
dismiss. (Docket No. 23-1.)

26 ² Respondent points out that Petitioner's claim that his attorney rendered ineffective
27 assistance by failing to file a notice of appeal indicates that he did not appeal, and that
there is no record of a direct appeal on the California Courts information website. (Mot. at
28 2, fn. 2.)

1 Petitioner filed the instant federal habeas action on November 15, 2018.³
2

3 **II. DISCUSSION**

4 **A. Federal Jurisdiction**

5 The federal writ of habeas corpus is only available to persons “in custody” at the
6 time the petition is filed. See 28 U.S.C. §§ 2241(c), 2254(a); Carafas v. LaVallee, 391
7 U.S. 234, 238 (1968). This requirement is jurisdictional. Id. A habeas petitioner must be
8 in custody under the conviction or sentence under attack at the time the petition is filed.
9 Maleng v. Cook, 490 U.S. 488, 490-91 (1989). A petitioner who files a habeas petition
10 after he has fully served his sentence and who is not subject to court supervision is not “in
11 custody” for the purposes of this court’s subject matter jurisdiction and his petition is
12 therefore properly denied. See De Long v. Hennessey, 912 F.2d 1144, 1146 (9th Cir.
13 1990).

14 Respondent asserts that since Petitioner is not in custody on the conviction that he
15 challenges in the present petition, the Court lacks jurisdiction over the present habeas
16 petition. (Reply at 2.) Respondent appears to be correct since Petitioner is now in custody
17 under a new and separate conviction. See Maleng, 490 U.S. at 490-91. Nevertheless,
18 since Petitioner has not had an opportunity to respond on this issue, the Court will also
19 address the matter of timeliness which would be a complete bar to this action even if
20 Petitioner’s custody status was not at issue.

21 **B. Statute of Limitations**

22 The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), which
23 became law on April 24, 1996, imposed for the first time a statute of limitations on
24 petitions for a writ of habeas corpus filed by state prisoners. Petitions filed by prisoners
25

26 _____
27 ³ Respondent does not contest the applicability of the mailbox rule to this case, such that
28 the instant petition is deemed filed the date Petitioner signed the proof of service
(November 15, 2018) instead of the date of filing (December 5, 2018). (Mot. at 2, fn. 3,
citing Houston v. Lack, 487 U.S. 266, 270 (1988); Stillman v. Lamarque, 319 F.3d 1199,
1201 (9th Cir. 2003).)

1 challenging non-capital state convictions or sentences must be filed within one year of the
2 latest of the date on which: (A) the judgment became final after the conclusion of direct
3 review or the time passed for seeking direct review; (B) an impediment to filing an
4 application created by unconstitutional state action was removed, if such action prevented
5 petitioner from filing; (C) the constitutional right asserted was recognized by the Supreme
6 Court, if the right was newly recognized by the Supreme Court and made retroactive to
7 cases on collateral review; or (D) the factual predicate of the claim could have been
8 discovered through the exercise of due diligence. 28 U.S.C. § 2244(d)(1). Time during
9 which a properly filed application for state post-conviction or other collateral review is
10 pending is excluded from the one-year time limit. Id. § 2244(d)(2).

11 The one-year period may start running from “the expiration of the time for seeking
12 [direct] review.” 28 U.S.C. § 2244(d)(1)(A). If a petitioner could have sought review by
13 the state court of appeals or the state supreme court, but did not, the limitations period will
14 begin running against him the day after the date on which the time to seek such review
15 expired. Gonzalez v. Thaler, 565 U.S. 134, 149-150 (2012); see Mendoza v. Carey, 449
16 F.3d 1065, 1067 (9th Cir. 2006) (because California prisoner did not appeal his conviction,
17 process of direct review became final 60 days after conviction); Cal. Rule of Court
18 8.308(a) (providing that appeal from criminal judgment must be filed within 60 days after
19 rendition of judgment or making of order being appealed) (formerly Cal. Rule of Court
20 31).

21 Respondent asserts that Petitioner’s conviction became final on December 8, 2015,
22 60 days after he was sentenced on October 9, 2015. (Mot. at 3.) The Court agrees because
23 the record shows that Petitioner did not seek review by filing a direct appeal, and his
24 conviction therefore became final 60 days after judgment. Cal. Rule of Court 8.308(a).
25 Nor does Petitioner contest this fact in opposition. Accordingly, absent tolling, Petitioner
26 had one year, i.e., until December 8, 2016, to file a timely federal habeas petition. See 28
27 U.S.C. § 2244(d)(1)(A). Because Petitioner filed the instant petition on November 15,
28 2018, nearly 2 years after the limitations period expired, it is untimely unless he is entitled

1 to tolling.

2 **1. Statutory Tolling**

3 The one-year statute of limitations is tolled under § 2244(d)(2) for the “time during
4 which a properly filed application for State post-conviction or other collateral review with
5 respect to the pertinent judgment or claim is pending.” 28 U.S.C. § 2244(d)(2). A state
6 habeas petition filed after AEDPA’s statute of limitations ended cannot toll the limitations
7 period. See Ferguson v. Palmateer, 321 F.3d 820, 823 (9th Cir. 2003) (“[S]ection 2244(d)
8 does not permit the reinitiation of the limitations period that has ended before the state
9 petition was filed,” even if the state petition was timely filed); Jiminez, 276 F.3d at 482
10 (same). Section 2244(d)(2) cannot “revive” the limitations period once it has run (i.e.,
11 restart the clock to zero); it can only serve to pause a clock that has not yet fully run.
12 “Once the limitations period is expired, collateral petitions can no longer serve to avoid the
13 statute of limitations.” Rashid v. Khulmann, 991 F. Supp. 254, 259 (S.D.N.Y. 1998).
14 Here, Petitioner filed his first state habeas petition on February 6, 2018, well after the
15 limitations period ended on December 8, 2016. See supra at 2. Accordingly, he is not
16 entitled to statutory tolling on that basis. See Ferguson, 321 F.3d at 823.

17 Respondent also asserts that the California Court of Appeal cited certain cases in
18 denying Petitioner’s state habeas petition, indicating that the state habeas petition was
19 untimely. (Mot. at 4.) Whether a state petition is untimely under California law is
20 resolved by looking to whether the highest state court to render a decision on the petition
21 found it timely. Curiel v. Miller, 830 F.3d 864, 870-71 (9th Cir. 2016) (en banc). “When
22 a postconviction petition is untimely under state law, ‘that [is] the end of the matter’ for
23 the purposes of § 2244(d)(2).” Pace v. DiGuglielmo, 544 U.S. 408, 414 (2005) (citing
24 Carey v. Saffold, 536 U.S. 214, 226 (2002)). In Pace, the Supreme Court held that
25 “[b]ecause the state court rejected petitioner’s [postconviction] petition as untimely, it was
26 not ‘properly filed,’ and he is not entitled to statutory tolling under §2244(d)(2).” Id. at
27 413. The Supreme Court determined that the existence of certain state law exemptions to a
28 timely filing requirement do not prevent a late application from being considered

1 improperly filed. Id. (a state postconviction petition rejected by the state court as untimely
2 and which does not fit within any exceptions to that limit is no more “properly filed” than
3 a petition filed after a time limit that permits no exception).

4 In rejecting Petitioner’s state habeas petitions, the California Court of Appeal cited
5 Clark and Robbins, which are controlling decisions on the issue of timeliness. See supra at
6 2. A denial without explanation other than a citation to Robbins at 18 Cal. 4th 770, 780,
7 the page where the court discusses the analytical framework for timeliness determinations,
8 as in the case at bar, is a denial as untimely. Thorson v. Palmer, 479 F.3d 643, 645 (9th
9 Cir. 2007). The state appellate court also cited to In re Swain and People v. Duvall, which
10 are alternative reasons for dismissal.⁴ Id. Nevertheless, the Court finds that the leading
11 citation to Clark and Robbins indicates that the state appellate court clearly intended to
12 impose the untimeliness bar which is sufficient to find that the petition was not properly
13 filed and therefore not entitled to statutory tolling under § 2244(d)(2). See Bonner v.
14 Carey, 425 F.3d 1145, 1148-49 (9th Cir. 2005), amended, 439 F.3d 993 (9th Cir. 2006)
15 (state court’s imposition of procedural bar of untimeliness, even joined with denial on the
16 merits, means petition was not properly filed under rule announced in Pace, 544 U.S. 408).

17 2. **Equitable Tolling**

18 In opposition, Petitioner contends he is entitled to equitable tolling based on the
19 following: his attorney’s failure to file a timely notice of appeal, “legal and physical
20 disability that restricted his ability to commence legal actions,” lack of control or access to
21 evidence, challenges due to his incarceration, lack of legal education, and lack of legal
22 material regarding AEDPA at his places of confinement. (Opp. at 7-11.) Petitioner also
23

24

25 ⁴ If the California Supreme Court denies a habeas petition without comment but with
26 citations to Ex parte Swain, 209 P.2d 793, 796 (Cal. 1949), and People v. Duvall, 886 P.2d
27 1252, 1258 (Cal. 1995), the denial is not necessarily based on untimeliness. See Cross v.
28 Sisto, 676 F.3d 1172, 1178 (9th Cir. 2012) (finding district court erred in interpreting the
state high court’s denial of state petition without comment but with citations to Swain and
Duvall to mean that the petition was untimely and therefore not properly filed; the proper
treatment of a citation to Swain is as a grant of a demurrer, “rendering the habeas petition
procedurally deficient yet properly filed under California law”).

1 contends for the first time that he discovered “Brady⁵ material, upon the filing of petition
2 of habeas corpus, that [he] with exercise of due diligence, had previously been unable to
3 discover, and therefore the statute of limitations does not begin to run until[] the date of
4 discovery...” under 28 U.S.C. § 2244(d)(1)(D). (Id.)

5 “[A] ‘petitioner’ is ‘entitled to equitable tolling’ only if he shows ‘(1) that he has
6 been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in
7 his way’ and prevented timely filing.” Holland v. Florida, 560 U.S. 631, 649 (2010)
8 (quoting Pace, 544 U.S. at 418); accord Rasberry v. Garcia, 448 F.3d 1150, 1153 (9th Cir.
9 2006) (quoting Pace); Miles v. Prunty, 187 F.3d 1104, 1107 (9th Cir. 1999) (“When
10 external forces, rather than a petitioner’s lack of diligence, account for the failure to file a
11 timely claim, equitable tolling of the statute of limitations may be appropriate.”). The
12 diligence required to establish entitlement to equitable tolling is “reasonable diligence.”
13 Holland, 560 U.S. at 653 (finding district court’s finding of lack of diligence incorrect and
14 remanding for detailed examination of facts to “determine whether they indeed constitute
15 extraordinary circumstances sufficient to warrant equitable relief”). The Ninth Circuit has
16 held that the petitioner bears the burden of showing that this “extraordinary exclusion”
17 should apply to him. Miranda v. Castro, 292 F.3d 1063, 1065 (9th Cir. 2002). The
18 prisoner also must show that “the extraordinary circumstances were the cause of his
19 untimeliness, and that the extraordinary circumstances made it impossible to file a petition
20 on time.” Ramirez v. Yates, 571 F.3d 993, 997 (9th Cir. 2009) (internal quotation marks
21 and citations omitted). Where a prisoner fails to show “any causal connection” between
22 the grounds upon which he asserts a right to equitable tolling and his inability to timely file
23 a federal habeas application, the equitable tolling claim will be denied. Gaston v. Palmer,
24 417 F.3d 1030, 1034-35 (9th Cir. 2005) (holding that where prisoner fails to show causal
25 connection between self-representation on direct appeal or physical and mental disabilities

26
27 ⁵ Brady v. Maryland, 373 U.S. 83, 87 (1963) (finding “the suppression by the prosecution
28 of evidence favorable to an accused upon request violates due process where the evidence
is material either to guilt or to punishment, irrespective of the good faith or bad faith of the
prosecution”).

1 and inability to timely file petition, district court's finding that he was not entitled to
2 equitable tolling where he had earlier filed a state habeas petition was not clear error).

3 The Court finds that Petitioner has failed to show that he was pursuing his rights
4 diligently and that some extraordinary circumstance stood in his way and prevented timely
5 filing. Holland, 560 U.S. at 649. First, Petitioner asserts that he found out that his
6 attorney had not filed a notice of appeal in December 2015, which is around the time his
7 conviction became final. (Opp., Ex. A at 1.) Therefore, even if the Court granted
8 equitable tolling until the time he learned his attorney did not file a notice of appeal, the
9 petition is still untimely. Second, with respect to his alleged "legal and physical
10 disability," Petitioner fails to provide specific descriptions of these disabilities or explain
11 how they establish that "extraordinary circumstance[s]" stood in his way. (Opp. at 7.)
12 Rather, as Respondent points out, Petitioner wrote a cogent letter to Mrs. N at a legal aid
13 society in January 2016, requesting assistance with several legal issues, and Petitioner also
14 managed to file three state court petitions. (Reply at 3.) Accordingly, Petitioner has failed
15 to show that any disability stood in the way of his ability to file a timely federal petition.
16 Furthermore, Petitioner alleges that he had lack of control or access to evidence that was
17 withheld by his attorney, (Opp. at 7), but as Respondent points out, Petitioner must
18 demonstrate that the lack of access to materials caused the untimely filing. (Reply at 4.)
19 Petitioner's claims are that counsel rendered ineffective assistance based on his failure to
20 move to withdraw his plea, provide information about his right to appeal, or to file a timely
21 notice of appeal. (Pet. at 5.) Respondents point out that Petitioner was fully aware of
22 these claims by January 2016. (Reply at 4, citing Opp., Exs. B and C.) Accordingly, it
23 cannot be said that a lack of materials prevented his ability to file a timely appeal when he
24 was aware of his claims in January 2016, and yet he waited over two years to file his first
25 state habeas petition in February 2018. See supra at 2. With respect to Petitioner's
26 allegations regarding challenges due to incarceration and his lack of legal expertise, such
27 factors, by themselves, do not constitute extraordinary circumstances warranting equitable
28 tolling. See Rasberry, 448 F.3d at 1154 (pro se petitioner's lack of legal sophistication is

1 dismiss the petition as untimely must be granted.

2

3 **III. CONCLUSION**

4 For the foregoing reasons, Respondent's motion to dismiss the petition as untimely,
5 (Docket No. 23), is **GRANTED**. The instant petition for a writ of habeas corpus is
6 **DISMISSED**. Petitioner's motion for reconsideration of appointment of counsel, (Docket
7 No. 37), is **DENIED** as moot.

8 No certificate of appealability is warranted in this case. See Rule 11(a) of the Rules
9 Governing § 2254 Cases, 28 U.S.C. foll. § 2254 (requiring district court to rule on
10 certificate of appealability in same order that denies petition). Petitioner has not shown
11 "that jurists of reason would find it debatable whether the petition states a valid claim of
12 the denial of a constitutional right and that jurists of reason would find it debatable
13 whether the district court was correct in its procedural ruling." Slack v. McDaniel, 529
14 U.S. 473, 484 (2000).

15 This order terminates Docket Nos. 23 and 37.

16 **IT IS SO ORDERED.**

17 Dated: 3/5/2020



EDWARD J. DAVILA
United States District Judge

25 Order Granting Motion to Dismiss; Denying COA
26 P:\PRO-SE\EJD\HC.18\07337Saddozai_grant-mtd(sol)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHIKEB SADDOZAI,

Plaintiffs,

V.

XAVIER BECERRA, et al.

Defendants.

Case No.: 18-cv-07337-EJD

CERTIFICATE OF SERVICE

10 I, the undersigned, hereby certify that:

(1) I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California; and

(2) On 3/6/2020, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an interoffice delivery receptacle located in the Clerk's office.

Shikeb Saddozai ID: AY1590
Corcoran State Prison
P.O. Box 3461
Corcoran, Ca 93212

Dated: 3/6/2020

Susan Y. Soong
Clerk, United States District Court

By: Adriana M. Kratzmann
Adriana M. Kratzmann, Deputy Clerk to
the Honorable Edward J. Davila

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHIKEB SADDOZAI,
Petitioner,

v.

XAVIER BECERRA, et al.,
Respondents.

Case No. 18-07337 EJD (PR)

JUDGMENT

For the reasons stated in the order granting Respondent's motion to dismiss the petition, this action is DISMISSED with prejudice. Judgment is entered accordingly.

IT IS SO ORDERED.

Dated: 3/5/2020



EDWARD J. DAVILA
United States District Judge

Judgment
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHIKEB SADDOZAI,
Plaintiffs,
v.
XAVIER BECERRA, et al
Defendant

Case No.: 18-cv-07337-EJD

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that:

(1) I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California; and

(2) On 3/6/2020, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an interoffice delivery receptacle located in the Clerk's office.

Shikeb Saddozai ID: AY1590
Corcoran State Prison
P.O. Box 3461
Corcoran, Ca 93212

Dated: 3/6/2020

Susan Y. Soong
Clerk, United States District Court

By: Adriana M. Kratzmann
Adriana M. Kratzmann, Deputy Clerk to
the Honorable Edward J. Davila

APPENDIX C

SUPREME COURT
FILED

Court of Appeal, First Appellate District, Division Five - No. A154939

OCT 10 2018

S250649

Jorge Navarrete Clerk

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re SHIKEB SADDOZAI on Habeas Corpus.

The petition for review is denied.

Corrigan, J., was absent and did not participate.

CANTIL-SAKAUYE

Chief Justice

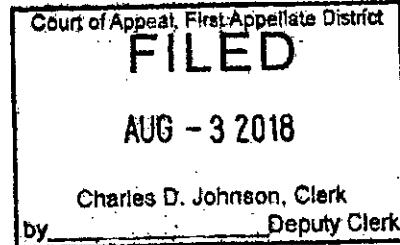
APPENDIX D

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE



In re SHIKEB SADDOZAI on Habeas Corpus.

A154939

San Mateo No. SC078812A

BY THE COURT:*

The petition for writ of habeas corpus is denied. (*In re Clark* (1993) 5 Cal.4th 750, 782-799; *In re Robbins* (1998) 18 Cal.4th 770, 780; *In re Swain* (1949) 34 Cal.2d 300, 303-304; *People v. Duvall* (1995) 9 Cal.4th 464, 474.)

Date AUG - 3 2018

Jones, P.J. P.J.

* Before Jones, P.J., Simons, J., and Bruiniers, J.

APPENDIX E

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FILED
SAN MATEO COUNTY

JUL 11 2018

Clerk of the Superior Court
By *[Signature]*
DEPUTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

In re:) Case No. SC 078812A
) HC-2783
SHIKEB SADDOZAI) HC-2799
)
On Habeas Corpus.) ORDER OF DENIAL
)

The Court has reviewed the Petition for Writ of Habeas Corpus filed by Petitioner Shikeb Saddozai on February 6, 2018, and the Petition for Writ of Habeas Corpus filed by Petitioner on April 30, 2018. Petitioner contends in both petitions that he should be permitted to withdraw his plea because his counsel provided ineffective assistance of counsel in the plea proceedings by failing to fully advise Petitioner. The instant petitions are denied.

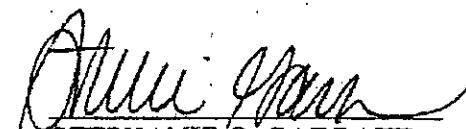
Petitioner contends in both petitions that he should be permitted to withdraw his plea, which was not knowingly and voluntarily made, because he did not know that he was giving up constitutional rights and did not know the direct consequences of his plea due to his counsel's failure to fully advise him. The instant petitions are untimely. Petitioner entered his plea on August 18, 2015, and was sentenced on October 9, 2015. Further, the record shows that Petitioner signed the change of plea form, which states that Petitioner was giving up certain constitutional rights by entering his plea and which included his sentence. The change of plea form additionally includes the signature of Petitioner's counsel confirming that counsel had

2 explained the contents of the change of plea form to Petitioner.

3 The general rule is that a petition must be filed promptly and that an untimely petition for
4 writ of habeas corpus may only be considered if the delay is justified by the petitioner by
5 showing an absence of substantial delay, good cause for the delay, or that the claim falls within
6 some exception to the bar of untimeliness. (*In re Douglas* (2011) 200 Cal.App.4th 236, 242–
7 243.) The instant petitions were not timely filed. Petitioner has failed to show either good cause
8 or that his claim falls within some exception to the bar of untimeliness. Consequently, his claim
9 set forth in both petitions is barred as untimely.

10 Petitioner fails to allege facts sufficient to establish a *prima facie* case for relief. The
11 instant Petition for Writ of Habeas Corpus is therefore denied. (*In re Clark* (1993) 5 Cal.4th 750,
12 769.)

13
14
15 DATED: 7/11/18


16 STEPHANIE G. GARRATT
17 Presiding Judge, Criminal
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