

1 ROB BONTA, State Bar No. 202668
Attorney General of California
2 TAMI M. KRENZIN, State Bar No. 183925
Supervising Deputy Attorney General
3 1300 I Street, Suite 125
P.O. Box 944255
4 Sacramento, CA 94244-2550
Telephone: (916) 210-7749
5 Fax: (916) 324-2960
E-mail: Tami.Krenzin@doj.ca.gov
6 *Attorneys for Respondent*

7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11
12 **DARRYL BURGHARDT,**

13
14 Petitioner,

2:25-cv-00960-SCR

MOTION TO DISMISS

15 v.

16 **JEFF MACOMBER,**

17 Respondent.
18

19 Respondent Kelly Santoro, Warden of the Salinas Valley State Prison,¹ moves to dismiss
20 the federal habeas petition because it is untimely (28 U.S.C. § 2244(d)).

21 **I**

22 **BACKGROUND**

23 Petitioner was convicted of battery by an inmate on a person not a prisoner. On December
24 2, 2022, he was sentenced to an indeterminate state prison term of twenty-five years to life. (Lod.
25 Doc. 1.) Petitioner did not appeal the sentence.

26
27 ¹ Kelly Santoro is the current Warden of the Salinas Valley State Prison, where Petitioner
28 is currently housed. Accordingly, Respondent respectfully requests that this Court substitute
Kelly Santoro as Respondent in this matter pursuant to Rule 25(d) of the Federal Rules of Civil
Procedure. *See Brittingham v. United States*, 982 F.2d 378, 379 (9th Cir. 1992).

Petitioner subsequently filed three *pro se* state post-conviction collateral challenges related to the pertinent judgment or claim:²

The First Petition:

May 27, 2024: Petition for writ of habeas corpus filed in the Sacramento County Superior Court (Lod. Doc. 2);

August 12, 2024: Petition denied (Lod. Doc. 3);

The Second Petition:

August 25, 2024: Petition for writ of habeas corpus filed in the California Court of Appeal (Lod. Doc. 4);

September 20, 2024: Petition denied (Lod. Doc. 5);

The Third Petition:

September 24, 2024: Petition for writ of habeas corpus filed in the California Supreme Court (Lod. Doc. 6);

March 12, 2025: Petition denied (Lod. Doc. 7).

Petitioner filed his federal petition on March 24, 2025. (Dkt. 1.)

II

ARGUMENT

THE PETITION SHOULD BE DISMISSED AS UNTIMELY

State prisoners who apply for federal habeas corpus relief must comply with a one-year statute of limitation (28 U.S.C. § 2244(d)). As explained below, Petitioner filed his application for federal habeas relief on March 24, 2025, over one year after expiration of the limitation period. The petition should be dismissed as untimely.

² The petitions listed were given the benefit of the mailbox rule. *See* Rule 3(d) of the Federal Rules Governing Section 2254 Cases.

A. The Limitation Period

A state prisoner challenging his custody has one year to file his federal petition from the date on which the judgment became final by the conclusion of direct review, or the expiration of the time for seeking such review. 28 U.S.C. § 2244(d)(1)(A).³

Petitioner did not appeal his sentence. Therefore, Petitioner's conviction became final sixty days after his December 2, 2022, sentence when the time for filing a direct appeal expired, or January 31, 2023. Cal. Rules of Court, rule 8.308; *Mendoza v. Carey*, 449 F.3d 1065, 1067 (9th Cir. 2006). The one-year limitation period commenced running the following day—February 1, 2023. *Patterson v. Stewart*, 251 F.3d 1243, 1246 (9th Cir. 2001) (citing Fed. R. Civ. P. 6(a)). Thus, the last day to file a federal petition was on January 31, 2024.

B. Statutory Tolling

The proper filing of a state post-conviction application with respect to the pertinent judgment or claim tolls the one-year limitation period. 28 U.S.C. § 2244(d)(2). Here, Petitioner did not file any state collateral actions within the limitation period.

Petitioner filed his first state habeas petition on May 27, 2024, nearly four months after the statute of limitation had expired on January 31, 2024. The filing of Petitioner's first through third petitions after expiration of the limitation period did not restart the clock at zero or otherwise save his claims from being time-barred. In other words, once the limitation period expired, the first through third state petitions did not revive it. See *Ferguson v. Palmateer*, 321 F.3d 820, 823 (9th Cir. 2003); *Jiminez v. Rice*, 276 F.3d 478, 482 (9th Cir. 2001).

³ The limitation period may begin running later under certain specified circumstances, none of which are applicable here. 28 U.S.C. § 2244(d)(1)(B)-(D).

III

CONCLUSION

The federal limitation period expired on January 31, 2024, but Petitioner did not file his federal habeas petition until March 24, 2025. The federal petition is untimely and should be dismissed with prejudice.

Dated: June 24, 2025

Respectfully submitted,

ROB BONTA
Attorney General of California

/s/ **Tami M. Krenzin**
TAMI M. KRENZIN
Supervising Deputy Attorney General
Attorneys for Respondent

SA2025302271
39119027.docx

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Burghardt v. Macomber**

No.: **2:25-cv-00960-SCR**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On June 24, 2025, I served the attached **Motion to Dismiss** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Sacramento, California, addressed as follows:

Darryl Burghardt

F-61090

Salinas Valley State Prison (1050)

P.O. Box 1050

Soledad, CA 93960-1050

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on June 24, 2025, at Sacramento, California.

M. Sanchez

Declarant

/s/ *M. Sanchez*

Signature