UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

IMMANUEL SHOTWELL,

Petitioner,

v.

PATRICK COVELLO,

Respondent.

Case No. 2:24-cv-00318-JDP (HC)

ORDER

SCREENING THE PETITION, OFFERING LEAVE TO AMEND, AND GRANTING PETITIONER'S APPLICATION TO PROCEED *IN FORMA PAUPERIS*

ECF Nos. 1 & 2

Petitioner, a state prisoner, brings this action under § 2254 and alleges several claims related to a conviction that was finalized in 2019. ECF No. 1 at 1-2. His petition appears to be time-barred. I will give him leave to amend so that he may explain why it should proceed. Additionally, I will grant petitioner's application to proceed *in forma pauperis*. ECF No. 2.

The petition is before me for preliminary review under Rule 4 of the Rules Governing Section 2254 Cases. Under Rule 4, the judge assigned to the habeas proceeding must examine the habeas petition and order a response to the petition unless it "plainly appears" that the petitioner is not entitled to relief. *See Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019); *Boyd v. Thompson*, 147 F.3d 1124, 1127 (9th Cir. 1998).

Petitioner has previously brought claims related to this conviction in this district. In *Shotwell v. Couello*, No. 2:22-cv-02176-TLN-EFB, it was determined that those claims were

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barred by the one-year statute of limitations contained in the Anti-Terrorism and Effective Death Penalty Act ("AEDPA"). *Id.* at ECF Nos. 16 & 17. In that case, Magistrate Judge Brennan determined that the last day for petitioner to file a federal habeas petition attacking this conviction was June 22, 2022. *Id.* at ECF No. 16. The instant action was filed in January 2024. ECF No. 1. Thus, it appears that petitioner's claims are time-barred. I will defer recommending dismissal and allow petitioner an opportunity to amend. He should explain why, if at all, his claims should be considered timely.

It is hereby ORDERED that:

1. Petitioner may file an amended petition within thirty days of this order's entry. If he fails to do so, I will recommend that this action be dismissed.

2. The Clerk of Court is directed to send petitioner a section 2254 habeas form with this order.

3. Petitioner's application to proceed *in forma pauperis*, ECF No. 2, is GRANTED.

IT IS SO ORDERED.

Dated: May 7, 2024

JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE