

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

TONY EUGENE SAFFOLD, <i>Petitioner-Appellant,</i> v. THOMAS L. CAREY,* <i>Respondent-Appellee.</i>
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No. 99-15541
D.C. No.
CV-98-01040-DFL
ORDER

On Remand from the United States Supreme Court

Filed July 8, 2002

Before: Betty B. Fletcher, William C. Canby, Jr., and
Diarmuid F. O'Scannlain, Circuit Judges.

ORDER

The Supreme Court having vacated the opinion of this court, *Saffold v. Newland*, 250 F.3d 1262 (9th Cir. 2001), and remanded, this case is remanded to the district court for further proceedings consistent with *Carey v. Saffold* (“*Saffold II*”), ___ S. Ct. ___, No. 01-301, 2002 WL 1305725 (U.S. decided June 17, 2002).

Specifically, we remand for an evidentiary hearing so that the district court may determine, in the first instance, whether Saffold filed his original habeas petition in the California Supreme Court “within a reasonable time after [he] knew, or with due diligence should have known, the facts underlying the claim as well as the legal basis of the claim.” *In re Harris*,

*Tom L. Carey is substituted for his predecessor, Anthony Newland. *See* Fed. R. App. P. 43(c)(2).

855 P.2d 391, 398 n.7 (Cal. 1993). As the Supreme Court observed in *Saffold II*, “[i]f the California Supreme Court had clearly ruled that Saffold’s 4-month delay was ‘unreasonable,’ that would be the end of the matter.” *Saffold II*, 2002 WL 1305725, at *9. But the California Court did not make such a clear ruling. *Id.* We accordingly ask the district court to determine whether Saffold’s petition met the California standard set forth in *Harris*.

The panel retains jurisdiction over the case in the event of any further appeals.

REMANDED.

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