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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MATTHEW WILLIAMS,	)	CASE NO. ED CV 13-146-PJW
	)	
Petitioner,	)	
	)	
v.	)	MEMORANDUM OPINION AND ORDER
	)	
G.D. LEWIS, WARDEN,	)	
	)	
Respondent.	)	
_____	)	

Before the Court is a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. For the reasons set forth below, the Petition is denied and the action is dismissed with prejudice.

I.

SUMMARY OF PROCEEDINGS

A. State Court Proceedings

On August 30, 2011, in San Bernardino County Superior Court, Petitioner pled guilty to voluntary manslaughter and assault with a firearm. He also admitted that he had personally used a firearm in the commission of the offenses. (Lodgment No. 1 at 34.) Pursuant to a plea agreement, he was sentenced to 21 years in prison. (Lodgment No. 1 at 34.) Petitioner did not appeal. Instead, on September 4, 2012, he filed a habeas corpus petition in the California Supreme

1 Court, which was denied on November 14, 2012. (Lodgment Nos. 2, 3.)  
2 Thereafter, on January 18, 2013, he filed a habeas corpus petition in  
3 the California Court of Appeal, which was denied on February 4, 2013.  
4 (Lodgment Nos. 4, 5.)

5 B. Federal Court Proceedings

6 On January 24, 2013, Petitioner, proceeding *pro se*, filed a  
7 Petition for Writ of Habeas Corpus in this court, claiming that the  
8 trial court unlawfully imposed an upper-term sentence without setting  
9 forth a statement of facts and reasons on the record for doing so, in  
10 violation of state law and *Cunningham v. California*, 549 U.S. 270,  
11 274-75 (2007). (Petition for Writ of Habeas Corpus ("Petition") at 5;  
12 Memorandum of Points and Authorities ("Pet. Memo.") at 2.) He also  
13 claimed that his resulting 21-year sentence was "cruel and unusual,"  
14 in violation of the Eighth Amendment to the United States Constitu-  
15 tion. (Pet. Memo. at 8.)

16 II.

17 STATEMENT OF FACTS

18 There was no preliminary hearing (or trial) in this case because  
19 Petitioner pled guilty at an early stage. The following factual  
20 statement was taken verbatim from the Probation Officer's Report:

21 On 07/10/10 there was a house party on Briarwood in  
22 Fontana. There were two young men acting as "bouncers" at the  
23 door. They turned away a group of young men at the door  
24 because they had not been invited. After the group was turned  
25 away, they remained in the street in front of the house. After  
26 what was described as an "amiable" exchange between the  
27 "bouncers" and the group, the group left. Approximately five  
28 minutes later, the same group returned to Briarwood. There was

1 what was described as a "barrage of gunfire that appeared to  
2 come from two or three different guns." Three people ended up  
3 getting shot: Victim 1 was shot in the head and died at the  
4 scene. Victims 2 and 3 were standing in the front yard and  
5 were shot in the legs. There was a fourth victim who was  
6 sitting in his car in the driveway. He was not wounded, but  
7 his car was covered with bullet holes.

8 Through their investigation, and in cooperation with  
9 Rialto PD and the FBI, Fontana PD officers learned that the  
10 shooting was gang-related and involved "NAW" gang members and  
11 "Hustler Squad" members. Officers were put in touch with a  
12 confidential informant, who identified [Petitioner] as the  
13 shooter who shot Victim 1.

14 On 10/15/10, [Petitioner] was contacted by police during a  
15 gang warrant sweep. He agreed to talk to the police about the  
16 homicide investigation. Over the course of the interview,  
17 [Petitioner] admitted to having a .45 caliber gun, being in the  
18 street in front of the house, and shooting at the house.  
19 [Petitioner] claimed that he was returning fire, and was  
20 shooting in self-defense. [Petitioner] was then arrested.

21 (Lodgment No. 1 at 38.)

22 Petitioner was initially charged with one count of murder and  
23 three counts of attempted murder. (Lodgment No. 1 at 1-6, 38.) It  
24 was also alleged that he intentionally discharged a firearm that  
25 caused great bodily injury in the commission of the crimes. (Lodgment  
26 No. 1 at 39.) In exchange for his plea, the prosecution dropped the  
27 murder and attempted murder charges and allowed Petitioner to plead  
28 guilty to voluntary manslaughter and assault with a firearm.

1 III.

2 STANDARD OF REVIEW

3 The standard of review in federal habeas proceedings is set forth  
4 in 28 U.S.C. § 2254:

5 An application for a writ of habeas corpus on behalf of a  
6 person in custody pursuant to the judgment of a State court  
7 shall not be granted with respect to any claim that was  
8 adjudicated on the merits in State court proceedings unless  
9 the adjudication of the claim--

10 (1) resulted in a decision that was contrary to, or  
11 involved an unreasonable application of, clearly established  
12 Federal law, as determined by the Supreme Court of the United  
13 States; or

14 (2) resulted in a decision that was based on an  
15 unreasonable determination of the facts in light of the  
16 evidence presented in the State court proceeding.

17 28 U.S.C. § 2254(d).

18 Here, there is no reasoned state court decision with respect to  
19 Petitioner's claims. Petitioner first raised the instant claims in  
20 his habeas petition in the state supreme court. That court denied the  
21 claims by citation to *People v. Duvall*, 9 Cal.4th 464, 474 (1995); *In*  
22 *re Dixon*, 41 Cal.2d 756, 759 (1953); and *In re Swain*, 34 Cal.2d 300,  
23 304 (1949). (Lodgment No. 3.) Respondent argues that these citations  
24 mean that Petitioner's claims are procedurally barred. (Memorandum of  
25 Points and Authorities in Support of Answer at 8-9.) In this  
26 instance, because it is easier to address the merits than the  
27 procedural issues, the Court has chosen to bypass the procedural  
28 default issue. See *Lambrix v. Singletary*, 520 U.S. 518, 524-25

1 (1997) (“We do not mean to suggest that the procedural-bar issue must  
2 invariably be resolved first [given constraints of judicial  
3 economy]”); *Franklin v. Johnson*, 290 F.3d 1223, 1232 (9th Cir. 2002).  
4 Because the state courts did not reach the merits of Petitioner’s  
5 claim, the Court must conduct a *de novo* review of the claims to  
6 determine if a constitutional violation occurred. *See Cone v. Bell*,  
7 556 U.S. 449, 472 (2009) (“Because the [state] courts did not reach  
8 the merits of [Petitioner’s] claim, federal habeas review is not  
9 subject to the deferential standard that applies under [28 U.S.C.  
10 § 2254(d)]. . . . Instead, the claim is reviewed *de novo*.”).

11 IV.

12 DISCUSSION

13 A. The Trial Court’s Imposition of an Upper-Term Sentence Was  
14 Constitutional

15 Petitioner contends that the trial court “erroneously” sentenced  
16 him to the upper-term sentence on both the attempted murder conviction  
17 and the use of a firearm allegation without filing a statement of  
18 reasons four days in advance of sentencing--which is required under  
19 state law. He argues that, in failing to do so, the court violated  
20 the Supreme Court’s mandate in *Cunningham*. (Pet. Memo. at 2-7.) For  
21 the following reasons, this claim is rejected.

22 Petitioner acknowledges, but fails to recognize the significance  
23 of the fact that, in the wake of *Cunningham*, the California  
24 legislature amended the state sentencing law in March 2007 to allow  
25 trial judges the discretion to sentence defendants to the upper term.  
26 Petitioner pled guilty and was sentenced in August 2011, long after  
27 the new law took effect, and, therefore, the trial court’s upper-term  
28 sentence did not violate the Constitution. *See, e.g., Juarez v.*

1 *Allison*, 2011 WL 3654449, at \*5 (C.D. Cal. Mar. 22, 2011) (finding  
2 "the upper term is the statutory maximum" under revised law); Cal.  
3 Penal Code § 1170(b) (as amended, effective March 30, 2007).  
4 Furthermore, even without the change in the state law, Petitioner's  
5 sentence would not have run afoul of *Cunningham* because it was  
6 pursuant to a plea agreement, which takes it out of the bounds of  
7 *Cunningham*. See *Graves v. Salazar*, 2011 WL 6942080, at \*6 (C.D. Cal.  
8 Sept. 30, 2011); see also *Russell v. Martel*, 2011 WL 6817690, at \*5  
9 (C.D. Cal. Aug. 9, 2011) (holding Supreme Court has never held that an  
10 upper-term sentence imposed pursuant to a plea agreement violates  
11 *Cunningham*). Because Petitioner agreed to a sentence of 21 years in  
12 exchange for the prosecution's agreement to drop a murder charge and  
13 three attempted murder charges, the trial court was not bound by the  
14 mandates of *Cunningham*.

15 Finally, Petitioner contends that his 21-year prison sentence  
16 constitutes cruel and unusual punishment. This argument is rejected.  
17 "The Eighth Amendment, which forbids cruel and unusual punishments,  
18 contains a narrow proportionality principle that applies to noncapital  
19 sentences." *Ewing v. California*, 538 U.S. 11, 20 (2003) (citation  
20 omitted). In noncapital cases, only sentences that are "grossly  
21 disproportionate" to the crime are forbidden. *Id.* at 23. A sentence  
22 that is consistent with state law is unconstitutional only when a  
23 "threshold comparison of the crime committed and the sentence imposed  
24 leads to an inference of gross disproportionality." *Id.* at 30. Here,  
25 it clearly does not. Petitioner pled guilty to voluntary manslaughter  
26 and assault with a firearm, crimes that caused the death of one person  
27 and gunshot wounds to two others. The United States Supreme Court has  
28 brushed aside constitutional challenges in cases involving much less

1 serious offenses. See, e.g., *Harmelin v. Michigan*, 501 U.S. 957, 994-  
2 95 (1991) (rejecting Eighth Amendment challenge to mandatory life term  
3 without possibility of parole for possession of 672 grams of cocaine  
4 by petitioner with no prior felony convictions); see also *Windham v.*  
5 *Merkle*, 163 F.3d 1092, 1106 (9th Cir. 1998) (affirming denial of  
6 Eighth Amendment challenge to fifteen-years-to-life sentence for  
7 aiding and abetting second-degree murder). Accordingly, there was no  
8 constitutional error in Petitioner's sentence.

9 V.

10 CONCLUSION

11 For these reasons, the Petition is denied and the action is  
12 dismissed with prejudice. Further, the Court finds that Petitioner  
13 has not made a substantial showing of the denial of a constitutional  
14 right and, therefore, a certificate of appealability is denied. See  
15 28 U.S.C. § 2253(c)(2); Fed. R. App. P. 22(b); *Miller-El v. Cockrell*,  
16 537 U.S. 322, 336 (2003).

17 IT IS SO ORDERED.

18 DATED: July 23, 2013, 2013

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PATRICK J. WALSH  
22 UNITED STATES MAGISTRATE JUDGE  
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