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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SERGIO PEDRAZA,)	1:07-CV-01710 OWW GSA HC
Petitioner,)	FINDINGS AND RECOMMENDATION
v.)	REGARDING PETITION FOR WRIT OF
)	HABEAS CORPUS
)	
PEOPLE OF CALIFORNIA,)	
Respondent.)	

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

BACKGROUND¹

On May 18, 2005, Petitioner was convicted in the Kern County Superior Court of robbery and receiving stolen property in violation of Cal. Penal Code §§ 212.5(c), 667(a). Allegations that Petitioner had suffered ten prior strike convictions were found to be true. Petitioner was sentenced to serve an aggregate indeterminate term of sixty years to life in state prison.

Petitioner appealed his conviction to the California Court of Appeal, Fifth Appellate District

¹This information is derived from the petition for writ of habeas corpus.

1 (hereinafter "Fifth DCA"). On August 22, 2005, the Fifth DCA affirmed the judgment. See
2 Exhibit 2, Petition. Petitioner then filed a petition for review in the California Supreme Court. On
3 October 25, 2006, the California Supreme Court denied review. See Exhibit 3, Answer.

4 On November 26, 2007, the instant federal petition for writ of habeas corpus was received in
5 this Court. The petition contains the following two grounds for relief: 1) "Information communicated
6 to police officer failed to furnish him with probable cause to detain Petitioner and search his
7 belongings and should have sustained timely defense counsel's objection at hearing on motion to
8 suppress, was not harmless error thus violated Petitioner's rights under 4th and 14th Amends. to U.S.
9 Const."; and 2) "Petitioner was denied the right to a jury trial on issue of his identity as the
10 perpetrator of strike prior convictions used as basis for sentencing enhancement violated his rights
11 under Apprendi v. New Jersey (2000) 530 U.S. 466 and his 6th and 14th Amends. rights under U.S.
12 Const."

13 DISCUSSION

14 I. Preliminary Review of Petition

15 Rule 4 of the Rules Governing Section 2254 Cases provides in pertinent part:

16 If it plainly appears from the petition and any attached exhibits that the petitioner is not
17 entitled to relief in the district court, the judge must dismiss the petition and direct the clerk
to notify the petitioner.

18 The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a petition for writ of
19 habeas corpus, either on its own motion under Rule 4, pursuant to the respondent's motion to
20 dismiss, or after an answer to the petition has been filed. See Herbst v. Cook, 260 F.3d 1039 (9th
21 Cir.2001). A petition for habeas corpus should not be dismissed without leave to amend unless it
22 appears that no tenable claim for relief can be pleaded were such leave granted. Jarvis v. Nelson,
23 440 F.2d 13, 14 (9th Cir. 1971).

24 II. Failure to State a Cognizable Federal Claim

25 A. Unreasonable Search

26 In his first claim for relief, Petitioner contends he was denied due process under the Fourth
27 Amendment when he was subjected to an unreasonable search and seizure. He alleges the
28 information provided to the arresting officer by police dispatch was insufficient to provide the officer

1 with reasonable suspicion to detain Petitioner and search his belongings. Petitioner argues the trial
2 court erroneously denied the motion to suppress.

3 A federal district court cannot grant habeas corpus relief on the ground that evidence was
4 obtained by an unconstitutional search and seizure if the state court has provided the petitioner with a
5 "full and fair opportunity to litigate" the Fourth Amendment issue. Stone v. Powell, 428 U.S. 465,
6 494 (1976); Woolery v. Arvan, 8 F.3d 1325, 1326 (9th Cir. 1993), *cert denied*, 511 U.S. 1057 (1994).
7 The only inquiry this Court can make is whether Petitioner had a fair opportunity to litigate his
8 claim, not whether Petitioner did litigate nor even whether the court correctly decided the claim.
9 Ortiz-Sandoval v. Gomez, 81 F.3d 891, 899 (9th Cir. 1996); see also, Gordon v. Duran, 895 F.2d 610,
10 613 (9th Cir. 1990) (holding that because Cal. Penal Code § 1538.5 provides opportunity to challenge
11 evidence, dismissal under Stone was necessary).

12 The policy behind the Stone Court's analysis is that the exclusionary rule is applied to stop
13 future unconstitutional conduct of law enforcement. Stone, 428 U.S. at 492. However, excluding
14 evidence that is not untrustworthy creates a windfall to the defendant at a substantial societal cost.
15 See Stone, 428 U.S. at 489-90; Woolery, 8 F.3d at 1327-28. Thus, the Ninth Circuit has described
16 the rationale for this rule by saying:

17 The holding is grounded in the Court's conclusion that in cases where a petitioner's
18 Fourth Amendment claim has been adequately litigated in state court, enforcing the
19 exclusionary rule through writs of habeas corpus would not further the deterrent and
20 educative purposes of the rule to an extent sufficient to counter the negative effect
21 such a policy would have on the interests of judicial efficiency, comity and
22 federalism.

23 Woolery, 8 F.3d at 1326; see also Stone, 428 U.S. at 493-494.

24 In this case, Petitioner's Fourth Amendment claim was litigated through a suppression
25 hearing in the Kern County Superior Court. After hearing argument from the prosecution and the
26 defense, the trial court denied the motion. The Court finds that the state court provided Petitioner
27 with a "full and fair opportunity to litigate" his Fourth Amendment claim. Stone, 428 U.S. at 494.
28 Pursuant to Stone v. Powell, the Court cannot grant habeas relief. The claim should be dismissed
with prejudice.

1 B. Right to Jury Trial on Issue of Petitioner's Identity

2 In his second claim for relief, Petitioner alleges he was denied his right to a jury trial on the
3 issue of his identity as the individual who committed the strike priors of which Petitioner was
4 charged. An error that violates a defendant's rights under the Constitution requires automatic
5 reversal if it constitutes a "structural defect" in the trial. Arizona v. Fulminante, 499 U.S. 279, 310
6 (1991). Depriving a defendant of his right to a jury trial would constitute such structural error.
7 Therefore, if Petitioner's argument is valid and structural error occurred, automatic reversal would be
8 required in this case.

9 As Petitioner correctly points out, in Almendarez-Torres v. United States, 523 U.S. 224, 243-
10 247 (1998), the Supreme Court held that a prior conviction that is used as a sentencing enhancement
11 is not subject to a requirement that a jury find it true beyond a reasonable doubt. In Apprendi v. New
12 Jersey, 530 U.S. 466, 489-490 (2000), the Supreme Court acknowledged that Almendarez-Torres
13 may have been incorrectly decided because it permitted a court to increase a defendant's sentence for
14 a prior conviction that was not mentioned in the indictment. However, the Court decided not to
15 revisit Almendarez-Torres and classified recidivism as a "narrow exception" to the general rule
16 announced in Apprendi. Id. Thus, while Petitioner correctly argues that Apprendi "casts doubt on the
17 continuing viability of Almendarez-Torres," Almendarez-Torres remains good law "unless and until
18 [it] is overruled by the Supreme Court." United States v. Pacheco-Zepeda, 234 F.3d 411, 414 (9th
19 Cir.2000), *amended*, 2000 WL 33156290 (9th Cir. Feb. 8, 2001), *cert. denied*, 121 S.Ct. 1503
20 (2001). Moreover, in this case, Petitioner was charged in the indictment with ten strike priors and it
21 was the jury which found the strike allegations to be true. Therefore, Petitioner's claim does not even
22 call into question the concerns raised in Apprendi.

23 **RECOMMENDATION**

24 Accordingly, the Court RECOMMENDS that the petition for writ of habeas corpus be
25 SUMMARILY DENIED with prejudice.

26 This Findings and Recommendation is submitted to the Honorable Oliver W. Wanger, United
27 States District Court Judge, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 72-304
28 of the Local Rules of Practice for the United States District Court, Eastern District of California.

1 Within thirty (30) days after being served with a copy, any party may file written objections with the
2 court and serve a copy on all parties. Such a document should be captioned “Objections to
3 Magistrate Judge’s Findings and Recommendation.” Replies to the objections shall be served and
4 filed within ten (10) court days (plus three days if served by mail) after service of the objections.
5 The Court will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636(b)(1)(C). The
6 parties are advised that failure to file objections within the specified time may waive the right to
7 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

8
9 IT IS SO ORDERED.

10 **Dated: December 5, 2007**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE