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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8
9 Sihar Hassan Zahir,

10 Petitioner,

11 vs.

12 Charles L. Ryan, et al.,

13 Respondents.

No. CV10-2393-PHX-DGC

ORDER

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15 In 1982, Petitioner Sihar Hassan Zahir¹ was convicted in Pinal County Superior
16 Court, Case No. 9553, of dangerous or deadly assault by an inmate in custody and
17 possession of a dangerous or deadly instrument by an inmate in custody. Doc. 23-1, at 2.
18 On February 16, 1982, the trial court sentenced Zahir to a mandatory term of life
19 imprisonment without the possibility of parole until he served at least 25 years on the
20 assault conviction. The court sentenced Zahir to four years' imprisonment on the
21 possession of a deadly weapon conviction. Doc. 23-1, at 16. The court upheld Zahir's
22 convictions and sentences on direct appeal and dismissed his post-conviction action.
23 Doc. 23-1, at 62, 68. Zahir did not seek review in the Arizona Court of Appeals.

24 In 2009, Zahir sent a letter to the Arizona Board of Executive Clemency asserting
25 that he was entitled to a hearing to determine his parole status, but that no such hearing
26 had been held. Doc. 23-1, at 72. Zahir also filed an Inmate Grievance in June 2010 with

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28 ¹ Petitioner was formerly known as David Samuel Goldston.

1 the Arizona Department of Corrections (“ADC”), complaining that he had been
2 erroneously deemed ineligible for a parole-eligibility hearing. The ADC explained that
3 Zahir would have been eligible for a hearing in July 2009 under his original sentence, but
4 that because of disciplinary violations, his earliest possible parole eligibility date was
5 now April 29, 2012. Doc. 23-1, at 70. Zahir’s administrative appeal of this decision was
6 denied on August 18, 2010. Doc. 23-1, at 75.

7 On November 4, 2010, Zahir filed a petition for writ of habeas corpus in this Court
8 pursuant to 28 U.S.C. § 2254. Doc. 1. The Court dismissed the petition and gave Zahir
9 leave to amend to allege a violation of federal constitutional or statutory rights. Doc. 8.
10 On April 13, 2011, Zahir filed a second amended petition raising four claims for habeas
11 relief. Doc. 15. The Court required Respondents to answer the petition. Doc. 16, at 2.
12 Respondents filed an answer (Doc. 23) and Zahir filed a reply (Doc. 26). United States
13 Magistrate Judge Lawrence O. Anderson issued a report and recommendation (“R&R”),
14 finding that Zahir’s claims were not cognizable on federal habeas review. Doc. 29. Judge
15 Anderson recommended that Zahir’s petition be denied and that a certificate of
16 appealability (“COA”) and leave to proceed *in forma pauperis* on appeal be denied. *Id.*
17 Zahir has filed an objection to the R&R (Doc. 33) and Respondents have filed a response
18 (Doc. 34). Neither party has requested oral argument. For the reasons below, the Court
19 will accept the R&R and deny the petition.

20 **I. Standard of Review.**

21 A party may file specific written objections to the R&R’s proposed findings and
22 recommendations. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1)(C). The Court must
23 undertake a de novo review of those portions of the R & R to which specific objections
24 are made. *See id.*; *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-*
25 *Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). The Court may accept, reject, or modify, in
26 whole or in part, the findings or recommendations made by the magistrate judge. Fed. R.
27 Civ. P. 72(b); 28 U.S.C. § 636(b)(1).

1 **II. Discussion.**

2 Zihir objects to Judge Anderson’s findings on the ground that he has “satisfied the
3 superior court’s sentencing commitment” and yet “the Department of Corrections, which
4 is a state-entity, refuses to certify this Petitioner eligible for parole” Doc. 33, at 2, 3.
5 Zihir argues that “[t]he problem lies with the Department of Corrections administrator’s
6 inability to correctly interpret and carry out or administrate, the Arizona Revised Statutes,
7 which are directly under the Arizona State’s Constitution which in turn, is under the
8 United States Constitution.” *Id.* at 3.

9 The federal habeas statute requires a petitioner to allege a “violation of the
10 Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). The Supreme
11 Court has repeatedly stated that “federal habeas corpus relief does not lie for errors of
12 state law.” *Estelle v. McGuire*, 502 U.S. 62, 67 (1991) (quoting *Lewis v. Jeffers*, 497
13 U.S. 764, 780 (1990)). “There is no right under the Federal Constitution to be
14 conditionally released before the expiration of a valid sentence, and the States are under
15 no duty to offer parole to their prisoners.” *Swarthout v. Cooke*, 131 S.Ct. 859, 862
16 (2011). Zihir challenges the application of a state law, and therefore his claims are not
17 cognizable on federal habeas review. *McCowan v. Nelson*, 436 F.2d 758, 759
18 (9th Cir. 1970) (holding that the defendant’s challenge to the state’s application of parole
19 statutes raised only questions of state law, and was therefore not cognizable on federal
20 habeas corpus review).

21 The R&R also recommended that a COA and leave to proceed *in forma pauperis*
22 on appeal be denied because Petitioner has not made a substantial showing of the denial
23 of a constitutional right. Doc. 29, at 5. Zihir has not objected or shown that a COA and
24 leave to appeal *in forma pauperis* are warranted. The Court therefore adopts the R&R’s
25 recommendations.

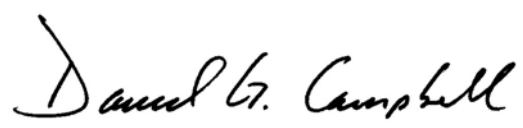
26 **IT IS ORDERED:**

- 27 1. Judge Anderson’s R&R (Doc. 29) is **accepted**.
28 2. The second amended petition for writ of habeas corpus (Doc. 15) is **denied**.

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3. A certificate of appealability and leave to proceed *in forma pauperis* on appeal are **denied** as stated above.

Dated this 13th day of December, 2011.



David G. Campbell
United States District Judge