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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

JEFFREY A. KNAPP,  
Petitioner,  
  
v.  
L.A. COUNTY SHERIFF'S DEPT.,  
Respondent.

No. CV 17-3859-PLA

**MEMORANDUM DECISION, ORDER AND  
JUDGMENT**

**I**

**PROCEDURAL HISTORY**

On January 17, 2017, in the Los Angeles County Superior Court, petitioner pleaded no contest to one count of receiving stolen property (Cal. Penal Code § 496d(a)), and admitted serving one prior prison term within the meaning of California Penal Code § 667.5(b). He was sentenced to a term of four years in the county jail. (ECF No. 1 at 4; ECF No. 20 at 63, 71-72, 115). Petitioner did not file an appeal.<sup>1</sup>

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<sup>1</sup> Although petitioner in his Petition indicates that he appealed his conviction, the record shows that he filed a habeas petition in the California Court of Appeal, and not a direct appeal. (continued...)

1 On March 20, 2017, petitioner filed a habeas petition in the Los Angeles County Superior  
2 Court, which was denied on April 7, 2017. (Lodgment Nos. 2, 3). On June 7, 2017, petitioner filed  
3 a habeas petition in the California Court of Appeal, which was denied on June 14, 2017, with a  
4 citation to In re Swain, 34 Cal.2d 300, 304 (1949). (Lodgment Nos. 4, 5). On October 16, 2017,  
5 petitioner filed a habeas petition in the California Supreme Court, which was denied on February  
6 28, 2018. (Lodgment Nos. 6, 7).

7 On May 23, 2017, petitioner filed a Petition for Writ of Habeas Corpus in this Court. (ECF  
8 No. 1). On June 19, 2017, he filed a First Amended Petition. (ECF No. 9). On October 13, 2017,  
9 he filed a Second Amended Petition. (ECF No. 20). On January 8, 2018, he filed the operative  
10 Third Amended Petition ("TAP"). (ECF No. 44).

11 On January 11, 2018, respondent filed a Motion to Dismiss, arguing that the Third Amended  
12 Petition contained unexhausted claims. The Court denied the Motion without prejudice to  
13 respondent reasserting the exhaustion argument in the Answer. (ECF Nos. 46, 90).

14 On July 16, 2018, respondent filed an Answer to the Third Amended Petition. (ECF No.  
15 99). On November 16, 2018, petitioner filed an "Answer," which the Court construes as his Reply.  
16 (ECF No. 108).

17 Both parties have consented to have the undersigned Magistrate Judge conduct  
18 proceedings in this matter. (ECF Nos. 26, 41, 42).

19 This matter is deemed submitted and is ready for a decision.  
20

21 **II**

22 **PETITIONER'S CONTENTIONS**

- 23 1. Petitioner requests leave to file his Third Amended Petition. (ECF No. 44 at 5, 10).  
24 2. Petitioner requests that the Court appoint counsel. (ECF No. 44 at 5-6, 10).  
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27 <sup>1</sup>(...continued)  
28 (See Lodgment Nos. 4, 5).

1 3. The denial of petitioner's Trombetta<sup>2</sup> motion was constitutional error. (ECF No. 44  
2 at 11).

3 4. Petitioner requests court transcripts. (ECF No. 44 at 6, 12-13).

4 5. Petitioner's sentence enhancement pursuant to California Penal Code § 667.5(b)  
5 was illegally imposed. (ECF No. 44 at 6, 16-17).

6 6. Petitioner requests discovery from the trial and appellate courts, and requests the  
7 appointment of counsel. (ECF No. 44 at 18-19).

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9 **III**

10 **STANDARD OF REVIEW**

11 The Petition was filed after the enactment of the Antiterrorism and Effective Death Penalty  
12 Act of 1996 ("the AEDPA"). Pub. L. No. 104-132, 110 Stat. 1214 (1996). Therefore, the Court  
13 applies the AEDPA in its review of this action. See Lindh v. Murphy, 521 U.S. 320, 336, 117 S.Ct.  
14 2059, 138 L.Ed.2d 481 (1997).

15 Under the AEDPA, a federal court may not grant a writ of habeas corpus on behalf of a  
16 person in state custody "with respect to any claim that was adjudicated on the merits in State court  
17 proceedings unless the adjudication of the claim (1) resulted in a decision that was contrary to,  
18 or involved an unreasonable application of, clearly established Federal law, as determined by the  
19 Supreme Court of the United States; or (2) resulted in a decision that was based on an  
20 unreasonable determination of the facts in light of the evidence presented in the State court  
21 proceeding." 28 U.S.C. § 2254(d). As explained by the Supreme Court, section 2254(d)(1)  
22 "places a new constraint on the power of a federal habeas court to grant a state prisoner's  
23 application for a writ of habeas corpus with respect to claims adjudicated on the merits in state  
24 court." Williams v. Taylor, 529 U.S. 362, 412, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000). In  
25 Williams, the Court held that:

26 Under the "contrary to" clause, a federal habeas court may grant the writ if the state  
27 court arrives at a conclusion opposite to that reached by this Court on a question of

28 <sup>2</sup> California v. Trombetta, 467 U.S. 479, 488, 104 S.Ct. 2528, 81 L.Ed.2d 413 (1984).

1 law or if the state court decides a case differently than this Court has on a set of  
2 materially indistinguishable facts. Under the “unreasonable application” clause, a  
3 federal habeas court may grant the writ if the state court identifies the correct  
governing legal principle from this Court’s decisions but unreasonably applies that  
principle to the facts of the prisoner’s case.

4 Williams, 529 U.S. at 412-13; see Weighall v. Middle, 215 F.3d 1058, 1061-62 (9th Cir. 2000)  
5 (discussing Williams). A federal court making the “unreasonable application” inquiry asks “whether  
6 the state court’s application of clearly established federal law was objectively unreasonable.”  
7 Williams, 529 U.S. at 409; Weighall, 215 F.3d at 1062. The Williams Court explained that “a  
8 federal habeas court may not issue the writ simply because that court concludes in its independent  
9 judgment that the relevant state-court decision applied clearly established federal law erroneously  
10 or incorrectly. Rather, that application must also be unreasonable.” Williams, 529 U.S. at 411;  
11 accord: Lockyer v. Andrade, 538 U.S. 63, 75-76, 123 S.Ct. 1166, 155 L.Ed.2d 144 (2003). Section  
12 2254(d)(1) imposes a “highly deferential standard for evaluating state-court rulings,” Lindh, 521  
13 U.S. at 333 n. 7, that “demands that state court decisions be given the benefit of the doubt.”  
14 Woodford v. Visciotti, 537 U.S. 19, 24, 123 S.Ct. 357, 154 L.Ed.2d 279 (2002) (per curiam). A  
15 federal court may not “substitut[e] its own judgment for that of the state court, in contravention of  
16 28 U.S.C. § 2254(d).” Id. at 25; Early v. Packer, 537 U.S. 3, 11, 123 S.Ct. 362, 154 L.Ed.2d 263  
17 (2002) (per curiam) (holding that habeas relief is not proper where state court decision was only  
18 “merely erroneous”).

19 The only definitive source of clearly established federal law under the AEDPA is the  
20 holdings (as opposed to the dicta) of the Supreme Court as of the time of the state court decision.  
21 Williams, 529 U.S. at 412. While circuit law may be “persuasive authority” for purposes of  
22 determining whether a state court decision is an unreasonable application of Supreme Court law  
23 (Duhaime v. Ducharme, 200 F.3d 597, 600-01 (9th Cir. 1999)), only the Supreme Court’s holdings  
24 are binding on the state courts and only those holdings need be reasonably applied. Williams, 529  
25 U.S. at 412; Moses v. Payne, 555 F.3d 742, 759 (9th Cir. 2009). Furthermore, under 28 U.S.C.  
26 § 2254(e)(1), factual determinations by a state court “shall be presumed to be correct” unless the  
27 petitioner rebuts the presumption “by clear and convincing evidence.”

1 A federal habeas court conducting an analysis under § 2254(d) “must determine what  
2 arguments or theories supported, or, [in the case of an unexplained denial on the merits], could  
3 have supported, the state court’s decision; and then it must ask whether it is possible fairminded  
4 jurists could disagree that those arguments or theories are inconsistent with the holding in a prior  
5 decision of [the Supreme Court].” Harrington v. Richter, 562 U.S. 86, 102, 131 S.Ct. 770, 178  
6 L.Ed.2d 624 (2011) (“A state court’s determination that a claim lacks merit precludes federal  
7 habeas relief so long as ‘fairminded jurists could disagree’ on the correctness of the state court’s  
8 decision.”). In other words, to obtain habeas relief from a federal court, “a state prisoner must  
9 show that the state court’s ruling on the claim being presented in federal court was so lacking in  
10 justification that there was an error well understood and comprehended in existing law beyond any  
11 possibility for fairminded disagreement.” Id. at 103. Additionally, the United States Supreme Court  
12 has held that “[w]here there has been one reasoned state judgment rejecting a federal claim, later  
13 unexplained orders upholding that judgment or rejecting the same claim rest upon the same  
14 ground.” Ylst v. Nunnemaker, 501 U.S. 797, 803, 111 S.Ct. 2590, 115 L.Ed.2d 706 (1991).

15 Here, petitioner raises six grounds for relief. As explained infra, Grounds One and Two are  
16 not cognizable in a federal habeas proceeding. Additionally, petitioner’s claim in Ground Three  
17 is barred pursuant to Tollett v. Henderson, 411 U.S. 258, 267, 93 S.Ct. 1602, 36 L.Ed.2d 235  
18 (1973), while his claim in Ground Five only implicates state law sentencing issues that are not  
19 cognizable on federal habeas review. To the extent petitioner raised his remaining claims in his  
20 state habeas petitions, the Court notes that the California Court of Appeal issued a denial citing  
21 Swain, on the ground that petitioner’s claims were not pled with sufficient particularity to obtain  
22 relief, while the California Supreme Court issued a silent denial. (Lodgment Nos. 5, 7). See  
23 Stancle v. Clay, 692 F.3d 948, 958 (9th Cir. 2012). In light of the Swain denial, the Court must  
24 “independently [ ] examine” petitioner’s state habeas petition to determine whether he met the  
25 federal exhaustion standard of “fair presentation” to the state’s highest court. See Kim v.  
26 Villalobos, 799 F.2d 1317, 1319-20 (9th Cir. 1986). Here, however, because petitioner’s remaining  
27 claims are clearly without merit, it is not necessary to determine whether petitioner satisfied the  
28 exhaustion requirement, as the claims fail even under de novo review. Berghuis v. Thompkins,

1 560 U.S. 370, 390, 130 S.Ct. 2250, 176 L.Ed.2d 1098 (2010) (where it is unclear whether AEDPA  
2 deference applies, court may deny writ of habeas corpus under § 2254 by engaging in de novo  
3 review because habeas petitioner will not be entitled to writ under § 2254 if claim can be rejected  
4 on de novo review); see also Pirtle v. Morgan, 313 F.3d 1160, 1167 (9th Cir. 2002) (when there  
5 is no state court decision on the merits, habeas review is de novo).

#### 6 7 IV

### 8 DISCUSSION

#### 9 **GROUND ONE AND TWO ARE NOT COGNIZABLE**

10 In Ground One, petitioner seeks leave to file his Third Amended Petition. (ECF No. 44 at  
11 5, 10). In a federal habeas proceeding, the court is limited to deciding whether a conviction  
12 violated the Constitution, laws or treaties of the United States. Estelle v. McGuire, 502 U.S. 62,  
13 68, 112 S.Ct. 475, 116 L.Ed.2d 385 (1991); see also 28 U.S.C. § 2254(a). Accordingly, Ground  
14 One is not cognizable here. In any event, petitioner's request is moot as the Third Amended  
15 Petition has been filed and is the operative pleading in this matter.

16 In Ground Two, petitioner requests that the Court appoint counsel. (ECF No. 44 at 5-6, 10).  
17 Not only does Ground Two not amount to a cognizable claim in a federal habeas proceeding, but  
18 the Court has already denied petitioner's prior requests for the appointment of counsel. (See, e.g.,  
19 ECF Nos. 29, 30, 33, 34, 48, 49). As the Court informed petitioner in those previous denials, he  
20 has not shown that the "circumstances of [his] case indicate that appointed counsel is necessary  
21 to prevent due process violations." Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986); see  
22 18 U.S.C. § 3006A(a)(2) (providing that a district court has discretion to appoint counsel for state  
23 habeas corpus petitioners when it determines "that the interests of justice so require"); see  
24 Anderson v. Heinze, 258 F.2d 479, 484 (9th Cir. 1958) ("Except under most unusual  
25 circumstances, an attorney ought not to be appointed by a federal court for the purpose of trying  
26 to find something wrong with a state judgment of conviction."). For the same reason, petitioner's  
27 request for appointment of counsel is again denied.

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4 **GROUND THREE: TROMBETTA VIOLATION**

5 In Ground Three, petitioner contends that, prior to his plea of no contest, the trial court  
6 erred in denying his Trombetta motion after the motor home, which was the stolen property that  
7 petitioner was convicted of buying or receiving, was destroyed or lost.<sup>3</sup> (ECF No. 44 at 6, 11-12).  
8 Petitioner explains that he needed access to the motor home in order to fingerprint the driver's  
9 side and steering column to prove that he never drove the vehicle.<sup>4</sup> For numerous reasons,  
10 petitioner's Trombetta claim fails.

11 "As a general rule, one who voluntarily and intelligently pled guilty to a criminal charge may  
12 not subsequently seek federal habeas relief on the basis of pre-plea constitutional violations."  
13 Mitchell v. Superior Court, 632 F.2d 767, 769 (9th Cir. 1980). As stated by the United States  
14 Supreme Court in Tollett, 411 U.S. at 267:

15 [A] guilty plea represents a break in the chain of events which has  
16 preceded it in the criminal process. When a criminal defendant has  
17 solemnly admitted in open court that he is in fact guilty of the offense  
18 with which he is charged, he may not thereafter raise independent  
claims relating to the deprivation of constitutional rights that occurred  
prior to the entry of the guilty plea. He may only attack the voluntary  
and intelligent character of the guilty plea[.]

19 This principle applies equally to defendants who plead no contest. Ortberg v. Moody, 961 F.2d  
20 135, 137-38 (9th Cir. 1992). When a criminal defendant enters a plea of no contest on the advice

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22 <sup>3</sup> Petitioner's Trombetta motion was denied by the trial court on November 18, 2016. (See  
ECF No. 108 at 29, 50).

23 <sup>4</sup> Based on the preliminary hearing transcripts, the facts underlying petitioner's conviction are  
24 as follows: police officers in Palmdale, California, responded to a location where they found  
25 petitioner inside a motor home. (ECF No. 20 at 29-31, 50). Twelve marijuana plants and a  
26 useable amount of methamphetamine were inside the motor home. (Id. at 32-24, 55). Petitioner  
27 told the officers that he was growing the marijuana for medicinal purposes, and that the motor  
28 home "might be stolen." (Id. at 35, 52-53). Petitioner also stated that he was homeless and was  
living in the vehicle. (Id. at 54). During their investigation, the police spoke to the manager of an  
RV company located in Westminster, California, which owned the motor home. The manager told  
police that petitioner "had no authorization to use the vehicle in any capacity." (Id. at 38).

1 of counsel, he may only attack the voluntary and intelligent character of his plea by showing that  
2 he entered a plea based on counsel's advice that was below the constitutional standard of  
3 competence demanded of defense attorneys. See Premo v. Moore, 562 U.S. 115, 123-28, 131  
4 S.Ct. 733, 178 L.Ed.2d 649 (2011); Hill v. Lockhart, 474 U.S. 52, 56, 106 S.Ct. 366, 88 L.Ed.2d  
5 203 (1985).<sup>5</sup>

6 Here, petitioner contends that misconduct occurred because a government officer failed  
7 to preserve the motor home, and petitioner was therefore prevented from fingerprinting the interior  
8 of the vehicle to prove that he never drove it. Pursuant to Tollett, this claim involves a pre-plea  
9 action that is barred from federal habeas review.<sup>6</sup>

10 \_\_\_\_\_  
11 <sup>5</sup> Since Tollett, the United States Supreme Court has recognized that the bar on attacking  
12 pre-plea constitutional errors does not apply when the defect in question is a "jurisdictional" one  
13 that implicates the government's power to prosecute the defendant. United States v. Johnston,  
14 199 F.3d 1015, 1019 n. 3 (9th Cir. 1999) ("The Court has subsequently limited the scope of those  
15 exceptions to include only those claims in which, judged on the face of the indictment and record,  
16 the charge in question is one which the state may not constitutionally prosecute.") (citing United  
17 States v. Broce, 488 U.S. 563, 574-76, 109 S.Ct. 757, 102 L.Ed.2d 927 (1989)); see also Menna  
18 v. New York, 423 U.S. 61, 62, 96 S.Ct. 241, 46 L.Ed.2d 195 (1975) (holding that the bar on  
19 collateral challenges to pre-plea errors did not apply to a claim that the indictment under which a  
20 defendant pleaded guilty placed him in double jeopardy); Blackledge v. Perry, 417 U.S. 21, 30-31,  
21 94 S.Ct. 2098, 40 L.Ed.2d 628 (1974) (holding that a guilty plea did not foreclose a claim that a  
22 defendant was vindictively prosecuted). Here, no "jurisdictional" exception to the Tollett rule  
23 applies, as petitioner's claim in Ground Three does not concern the power of the state to  
24 prosecute him.

19 <sup>6</sup> For the same reasons, to the extent petitioner in this habeas action seeks to  
20 challenge the trial court's handling of his motion to dismiss, filed in the trial court on October 26,  
21 2016, his claim is barred pursuant to Tollett. (See ECF No. 108 at 2).

22 To the extent petitioner in his Reply challenges the voluntary nature of his plea, that claim  
23 fails as well. (See ECF No. 108 at 15). As a threshold matter, petitioner's attempt to raise a new  
24 claim in his Reply is improper. See Cacerdo v. Demosthenes, 37 F.3d 504, 507 (9th Cir. 1994)  
25 ("A Traverse is not the proper pleading to raise additional grounds for relief."); see also Rule  
26 2(c)(1) of Rules Governing Section 2254 Cases (habeas petition must "specify all the grounds for  
27 relief available to the petitioner"). A district court has discretion to consider or not consider a claim  
28 raised for the first time after the filing of the petition. See Brown v. Roe, 279 F.3d 742, 745-46 (9th  
Cir. 2002). Here, the Court exercises its discretion to consider the new claim.

To be valid, a plea must be both voluntary and intelligent. United States v. Hernandez, 203  
F.3d 614, 618-19 (9th Cir. 2000) (citing Tollett, 411 U.S. at 267); see also Brady v. United States,  
397 U.S. 742, 748, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970). "A plea is 'involuntary' if it is the  
product of threats, improper promises, or other forms of wrongful coercion." Hernandez, 203 F.3d

(continued...)



1 In any event, petitioner's Trombetta claim fails on the merits. Law enforcement officials  
2 generally have a duty to preserve and collect "evidence that might be expected to play a significant  
3 role in the suspect's defense." Trombetta, 467 U.S. at 488; Miller v. Vasquez, 868 F.2d 1116,  
4 1120 (9th Cir. 1989) (holding that bad faith failure to collect potentially exculpatory evidence would  
5 violate Due Process Clause). However, this duty to preserve or collect evidence applies only to  
6 "material evidence, i.e., evidence whose exculpatory value was apparent before its destruction and  
7 that is of such nature that the defendant cannot obtain comparable evidence from other sources."  
8 Cooper v. Calderon, 255 F.3d 1104, 1113 (9th Cir. 2001) (citing Trombetta, 467 U.S. at 489).

9 In addition, the government's failure to preserve or collect potentially exculpatory evidence  
10 rises to a due process violation only where the "criminal defendant can show bad faith." Arizona  
11 v. Youngblood, 488 U.S. 51, 58, 109 S.Ct. 333, 102 L.Ed.2d 281 (1988); Miller, 868 F.2d at 1120-  
12 21. Bad faith is shown where "the police themselves by their conduct indicate that the evidence  
13 could form a basis for exonerating the defendant." Youngblood, 488 U.S. at 58.

14 The record here shows that the superior court denied petitioner's Trombetta on the basis  
15 that petitioner failed to demonstrate that the motor home had exculpatory value. (ECF No. 108  
16 at 50). The superior court's denial was not objectively unreasonable. At the preliminary hearing,  
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18 <sup>6</sup>(...continued)  
19 at 619. A plea "is 'unintelligent' if the defendant is without the information necessary to assess  
20 intelligently" the consequences of the plea. Id. at 619 & n.7.

21 A defendant's representations at a plea hearing, as well as any findings made by the judge  
22 accepting the plea, constitute a "formidable barrier in any subsequent collateral proceedings."  
23 Blackledge v. Allison, 431 U.S. 63, 73-74, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). At petitioner's  
24 plea hearing, petitioner was informed that his maximum exposure if he went to trial was nine years  
25 and six months. Petitioner then agreed to the plea agreement with a sentence of four years (plus  
26 418 days of credit). (ECF No. 20 at 67-68). He expressly acknowledged that he understood the  
27 charges involved in the plea agreement, as well as his constitutional rights and consequences of  
28 the plea. Petitioner denied that anyone threatened him or made any special promises to induce  
him to plead no contest. (Id. at 68-72). "Solemn declarations in open court carry a strong  
presumption of verity." Blackledge, 431 U.S. at 74. Moreover, when a defendant denies any  
threats or coercions during the plea colloquy, "[c]ourts generally consider such responses to be  
strong indicators of the voluntariness of the defendant's guilty plea." Sanchez v. United States,  
50 F.3d 1448, 1455 (9th Cir. 1995). Additionally, the trial court determined petitioner entered his  
plea freely and voluntarily. (ECF No. 20 at 71). Petitioner in the Reply did not proffer any evidence  
indicating that he was coerced into accepting the plea agreement. Based on the foregoing, the  
Court finds that petitioner has not made a showing that his plea was involuntary.

1 testimony established that two police officers found petitioner inside the stolen motor home.  
2 Petitioner told the officers that he was living in the motor home, that the motor home “might be  
3 stolen,” and that he was growing medicinal marijuana plants in the motor home. In his Trombetta  
4 claim, petitioner represents that he never drove the motor home, and sought to fingerprint the  
5 motor home to prove that he never touched the steering column. The identity of the driver,  
6 however, was not relevant to petitioner’s conviction for receipt of stolen property, as proving that  
7 petitioner actually drove the motor home was not an element of the charged offense.<sup>7</sup> Thus,  
8 contrary to petitioner’s claim, a fingerprint analysis of the motor home would not have exonerated  
9 him. In turn, petitioner cannot demonstrate, had the motor home been available for fingerprinting  
10 during the time of his criminal proceedings, that the outcome of his case would have been any  
11 different. Moreover, there is no indication of bad faith on the part of the police or prosecution, i.e.,  
12 that they knew of the exculpatory value of the evidence and yet failed to preserve it. Accordingly,  
13 since petitioner has failed to show both that the motor home was exculpatory, and that the police  
14 or prosecution acted in bad faith in failing to preserve it, there was no Trombetta violation.

15 For these reasons, habeas relief is denied for Ground Three.  
16

17 **GROUND FOUR AND SIX: REQUEST FOR TRANSCRIPTS**

18 In Grounds Four and Six, petitioner seeks transcripts from his state court proceedings and  
19 discovery. (ECF No. 44 at 12, 18-19).

20 This Court has granted petitioner numerous extensions of time in order for him to obtain  
21 transcripts. Based on petitioner’s Reply, it appears that he has now obtained the transcripts he  
22 had been seeking. (ECF No. 108 at 8).

23 \_\_\_\_\_  
24 <sup>7</sup> Section 496d(a) of the California Penal Code states in relevant part: “Every person who  
25 buys or receives any motor vehicle . . . that has been stolen or that has been obtained in any  
26 manner constituting theft or extortion, knowing the property to be stolen or obtained, or who  
27 conceals, sells, withholds, or aids in concealing, selling, or withholding any motor vehicle . . . from  
28 the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment  
for 16 months or two or three years or a fine of not more than ten thousand dollars (\$10,000),  
or both, or by imprisonment in a county jail not to exceed one year or a fine of not more than one  
thousand dollars (\$1,000), or both.”

1 To the extent petitioner seeks additional transcripts, he has not shown a basis for habeas  
2 relief. The Supreme Court has held that due process and equal protection require that indigent  
3 criminal defendants be provided with free transcripts of their trials for use on direct appeal. See  
4 Britt v. North Carolina, 404 U.S. 226, 227, 92 S.Ct. 431, 30 L.Ed.2d 400 (1971); Griffin v. Illinois,  
5 351 U.S. 12, 18-20, 76 S.Ct. 585, 100 L.Ed. 891 (1956) (per curiam). Here, petitioner attached  
6 the transcripts from his preliminary hearing and from his plea hearing to his Second Amended  
7 Petition. (See ECF No. 20 at 24-74). In his Reply, he attached a transcript of a superior court  
8 proceeding that took place on November 18, 2016, during which his Trombetta motion was heard  
9 and denied.<sup>8</sup> To the extent petitioner seeks additional transcripts, he does not specify which  
10 transcripts he is missing, and fails to identify what claims he would pursue if he obtained additional  
11 transcripts.

12 Moreover, to the extent petitioner seeks “discovery,” a habeas petitioner is not entitled to  
13 discovery as an ordinary matter of course. Bracy v. Gramley, 520 U.S. 899, 904, 117 S. Ct. 1793,  
14 138 L. Ed. 2d 97 (1997); see also Harris v. Nelson, 394 U.S. 286, 295, 89 S. Ct. 1082, 22 L. Ed.  
15 2d 281 (1969) (noting that the “broad discovery provisions” of the Federal Rules of Civil Procedure  
16 do not apply in habeas proceedings); Campbell v. Blodgett, 982 F.2d 1356, 1358 (9th Cir. 1993)  
17 (“[T]here simply is no federal right, constitutional or otherwise, to discovery in habeas proceedings  
18 as a general matter.”). “A judge may, for good cause, authorize a party to conduct discovery  
19 under the Federal Rules of Civil Procedure and may limit the extent of discovery.” Rule 6(a) of  
20 the Rules Governing Section 2254 Cases in the United States District Courts; see Bracy, 520 U.S.  
21 at 902-04 (a habeas petitioner has the right to obtain discovery only upon a showing of “good  
22 cause.”); Jones v. Wood, 114 F.3d 1002, 1009 (9th Cir. 1997) (“[D]iscovery is available to habeas  
23 petitioners at the discretion of the district court judge for good cause shown.”). Here, petitioner  
24 does not describe with any specificity what discovery he seeks and how the discovery would  
25 impact his grounds for relief. Moreover, the Court notes that his claims presented in the TAP can  
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27  
28 <sup>8</sup> Respondent in the Answer incorrectly represents that because petitioner pleaded no  
contest and did not appeal, there are no transcripts. (ECF No. 99 at 2).

1 be properly considered by the Court without the aid of any additional transcripts or discovery.  
2 Accordingly, petitioner has not demonstrated good cause for discovery, or in turn, that he has  
3 suffered any prejudice from the lack of any additional, unidentified transcripts and/or discovery.

4 For these reasons, Grounds Four and Six fail.

5  
6 **GROUND FIVE: ILLEGAL SENTENCE ENHANCEMENT**

7 Petitioner alleges in Ground Five that his one-year sentence enhancement imposed  
8 pursuant to California Penal Code § 667.5(b) was illegal in light of Proposition 57, and that he has  
9 not received the correct amount of custody credits. (ECF No. 44 at 6, 16-17).

10 **A. Proposition 57**

11 Petitioner raised this claim in a habeas petition filed in the Los Angeles County Superior  
12 Court, which issued the following denial on April 7, 2017:

13 Proposition 57 only provides an inmate who has completed his  
14 base term with a hearing before the Board of Parole Hearings (Cal.  
15 Const., Art. 1, Sec. 32(a)). There is no resentencing option in the  
16 Superior Court. It does not appear petitioner has completed his base  
17 term to even qualify for a hearing before the Parole Board as his  
18 sentencing on this case occurred on 1/17/17.

19 (Lodgment No. 2).

20 Proposition 57, which was approved by California voters in November 2016, amended the  
21 California Constitution to add Section 32 to Article I, making nonviolent adult offenders “eligible  
22 for parole consideration after completing the full term for [their] primary offense[s].”<sup>9</sup> Cal. Const.  
23 art. I, § 32(a)(1).

24 California cases addressing the application of Proposition 57 have “uniformly state[d] that  
25 Proposition 57 creates a mechanism for parole consideration, not a vehicle for resentencing.”  
26 Daniels v. California Dep’t of Corr. and Rehab., 2018 WL 489155, at \*4 (E.D. Cal. Jan. 19, 2018).  
27 Thus, at most, Proposition 57 provides for expanded eligibility of parole for certain convicted

28 \_\_\_\_\_  
<sup>9</sup> “Primary offense” is defined as “the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence.” Cal. Const., art. I, § 32(a)(1)(A).

1 felons. It “does not require or provide any mechanism for state law prisoners to be resentenced  
2 by the courts in which they were convicted.” Travers v. State of Cal., 2018 WL 707546, at \*3 (N.D.  
3 Cal. Feb. 5, 2018).

4 Based on the above, the Court concludes that petitioner’s Proposition 57 claim does not  
5 challenge the constitutional validity of his conviction or the sentence imposed as a result of that  
6 conviction. In any event, his Proposition 57 claim is not cognizable under federal habeas review  
7 because petitioner is only asserting a violation or misinterpretation of state law and Section 2254  
8 provides a remedy only for the violation of the Constitution or laws or treaties of the United  
9 States.<sup>10</sup> Swarthout v. Cooke, 562 U.S. 216, 222, 131 S.Ct. 859, 178 L.Ed.2d 732 (2011) (“the  
10 responsibility for assuring that the constitutionally adequate procedures governing California’s  
11 parole system are properly applied rests with California courts”).

## 12 **B. Custody Credits**

13 The Court next considers petitioner’s claim seeking milestone credits and Plata/Coleman<sup>11</sup>  
14 credits. “Milestone Completion Credits” are awarded in California prisons to inmates who achieve  
15 “a distinct objective of approved rehabilitative programs, including academic programs, substance  
16 abuse treatment programs, social life skills programs, Career Technical Education programs,  
17 Cognitive Behavioral Treatment programs, Enhanced Outpatient Program group module treatment  
18 programs, or other approved programs with similar demonstrated rehabilitative qualities.” Cal.

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19  
20 <sup>10</sup> Additionally, to the extent petitioner seeks an order requiring prison officials to  
21 consider if he is eligible for parole, he may not seek such an order by way of a federal habeas  
22 corpus petition. “Challenges to the validity of any confinement or to particulars affecting its duration  
23 are the province of habeas corpus; requests for relief turning on circumstances of confinement  
24 may be presented in a § 1983 action.” See Nettles v. Grounds, 830 F.3d 922, 927 (9th Cir. 2016)  
25 (en banc). A habeas petition is the exclusive vehicle for claims brought by state prisoners that fall  
26 within “the core of habeas.” Id. Conversely, “a § 1983 action is the exclusive vehicle for claims  
27 brought by state prisoners that are not within the core of habeas corpus.” Id. Where success on  
28 a petitioner’s habeas claim would not necessarily lead to his immediate or earlier release from  
custody, the claim does not fall within “the core of habeas corpus.” Id. at 934-35. In other words,  
a finding that petitioner was wrongly denied consideration for parole pursuant to Proposition 57  
would not necessarily impact the duration of his confinement, and therefore his claim cannot be  
brought in a federal habeas petition.

<sup>11</sup> See infra.

1 Code Regs. tit. 15, § 3043.3(a). Milestone credits are awarded in increments of not less than one  
2 week, and “shall advance an inmate’s release date if sentenced to a determinate term or advance  
3 an inmate’s initial parole hearing date . . . if sentenced to an indeterminate term with the possibility  
4 of parole.” Id., § 3043.3(c).

5 It also appears that petitioner seeks credits pursuant to a February 10, 2014, order issued  
6 by a federal three-judge court “requiring California to implement specific measures to reduce the  
7 prison population, including, ‘increasing credits prospectively for non-violent second-strike  
8 offenders and minimum custody inmates.’ [The order] specifies ‘[n]on-violent second-strikers will  
9 be eligible to earn good time credits at 33.3% and will be eligible to earn milestone credits for  
10 completing rehabilitation programs.’” Jones v. Director of Corrections, 2018 WL 985369, at \*6  
11 n.13 (S.D. Cal. Feb. 20, 2018) (citations omitted).

12 As set forth in Miller v. Rickley, 2016 WL 7480265, at \*3 (C.D. Cal. Nov. 22, 2016), the  
13 February 10, 2014, order referenced above stemmed from two prisoner civil rights class actions  
14 that were ultimately consolidated before the three-judge court:

15 One of those actions, Coleman v. Brown, No. S-90-0520-KJM-DB (E.D. Cal.),  
16 involves a class of state prisoners with serious mental illnesses. See Brown v.  
17 Plata, 563 U.S. 493, 506, 131 S. Ct. 1910, 179 L.Ed. 2d 969 (2011). The Coleman  
18 district court determined that conditions in the California prisons violated the Eighth  
19 Amendment. See Coleman v. Wilson, 912 F. Supp. 1282 (E.D. Cal. 1995). The  
20 district court appointed a Special Master to oversee remedial efforts, but conditions  
21 had not sufficiently improved after a number of years, and the Special Master  
22 attributed this to overcrowding in the prisons. See 563 U.S. at 506-07. [¶] The  
23 other class action, Plata v. Brown, No. C 01-1351[-]THE (N.D. Cal.), involves a class  
24 of state prisoners with serious medical conditions. See 563 U.S. at 507. In Plata,  
25 the state conceded that deficiencies in medical care in state prisons violated the  
26 Eighth Amendment and stipulated to a remedial injunction. See id. However, the  
27 state failed to comply with the injunction, and the district court appointed a Receiver  
28 to oversee remedial efforts. Id. Prison conditions remained deficient after several  
years, and like the Coleman Special Master, the Plata Receiver noted the impact of  
overcrowding. Id. at 507-09.

24 Petitioner’s claim regarding milestone and Plata/Coleman credits fails. A petitioner may  
25 seek federal habeas relief from a state court conviction or sentence only if he is contending that  
26 he is in custody in violation of the Constitution or laws or treaties of the United States. See 28  
27 U.S.C. § 2254(a); Estelle, 502 U.S. at 67-68. “Plata and Coleman do not provide an independent  
28 constitutional platform upon which [a] [p]etitioner may premise a cognizable federal habeas claim.”

1 Lopez v. Ndoh, 2016 WL 3418432, at \*2 (E.D. Cal. June 22, 2016); Miller, 2016 WL 7480265, at  
2 \*6 (Plata/Coleman order did not “expand a habeas petitioner’s constitutional rights” and “is not  
3 clearly established supreme court authority, so cannot provide habeas relief.”). Moreover, matters  
4 relating solely to the interpretation and/or application of state law generally are not cognizable on  
5 federal habeas review. See Rhoades v. Henry, 611 F.3d 1133, 1142 (9th Cir. 2010) (“violations  
6 of state law are not cognizable on federal habeas review”). Petitioner’s claim that he was not  
7 awarded milestone credits implicates only state law questions, and thus is not cognizable in this  
8 action. See, e.g., Robison v. CDCR, 2018 WL 6329661, at \*3 (E.D. Cal. Dec. 4, 2018) (“Federal  
9 habeas challenges to CDCR’s awarding and calculation of custody credits are regularly rejected  
10 as non-cognizable by the district courts.”); Mason v. Holt, 2016 WL 6136076, at \*5 (E.D. Cal. Oct.  
11 21, 2016) (“To the extent petitioner is alleging that state authorities violated state law in failing to  
12 award him the correct amount of time credits . . . , his claims are not cognizable in this federal  
13 habeas action.”).

14 For these reasons, Ground Five does not warrant habeas relief.

## 16 **CERTIFICATE OF APPEALABILITY**

17 Under Rule 11(a) of the Rules Governing § 2254 Cases, a court must grant or deny a  
18 certificate of appealability (“COA”) when it denies a state habeas petition. See also 28 U.S.C. §  
19 2253(c).

20 A petitioner may not appeal a final order in a federal habeas corpus proceeding without  
21 first obtaining a COA. See 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A COA may issue “only  
22 if . . . [there is] a substantial showing of the denial of a constitutional right.” 28 U.S.C. §  
23 2253(c)(2). A “substantial showing . . . includes showing that reasonable jurists could debate  
24 whether (or, for that matter, agree that) the petition should have been resolved in a different  
25 manner or that the issues presented were ‘adequate to deserve encouragement to proceed  
26 further.’” Slack v. McDaniel, 529 U.S. 473, 484, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000)  
27 (citation omitted); see also Sassounian v. Roe, 230 F.3d 1097, 1101 (9th Cir. 2000). Thus,  
28 “[w]here a district court has rejected the constitutional claims on the merits, . . . [t]he petitioner

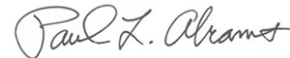
1 must demonstrate that reasonable jurists would find the district court's assessment of the  
2 constitutional claims debatable or wrong." Slack, 529 U.S. at 484.

3 The Court concludes that, for the reasons set out above, jurists of reason would not find  
4 the Court's assessment of petitioner's claims debatable or wrong. Accordingly, a certificate of  
5 appealability is denied. Petitioner is advised that he may not appeal the denial of a COA, but he  
6 may ask the Ninth Circuit Court of Appeals to issue a COA under Rule 22 of the Federal Rules of  
7 Appellate Procedure. See Rule 11(a), Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254.

8  
9 **V**

10 **ORDER**

11 For the foregoing reasons, IT IS SO ORDERED AND ADJUDGED that Judgment is entered  
12 denying and dismissing the Third Amended Petition with prejudice. A certificate of appealability  
13 is also denied.



14 DATED: December 11, 2018

15 \_\_\_\_\_  
16 PAUL L. ABRAMS  
17 UNITED STATES MAGISTRATE JUDGE  
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