

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

DESHAWN L. DAVIS,) Case No. CV 17-3903-DDP (AJW)
Petitioner,)
v.) MEMORANDUM AND ORDER
THE PEOPLE OF THE STATE OF) DISMISSING PETITION
CALIFORNIA,)
Respondent.)

In 2007, petitioner was convicted of two counts of burglary and sentenced to twelve years in state prison. [Petition at 2]. In 2016, petitioner filed a petition for reduction of his sentence in the California Superior Court pursuant to Proposition 47.¹ The Superior Court denied petitioner's request on April 28, 2016. [Petition at 3].

On May 24, 2017, petitioner filed a petition for a writ of habeas corpus in this Court. The petition challenges the Superior Court's denial of his request for resentencing. For the following reasons, the

¹ Proposition 47, which is codified at section 1170.18 of the California Penal Code, became effective on November 5, 2014. It permits resentencing of prisoners who are serving a sentence for a felony conviction if the offense would have been a misdemeanor if Proposition 47 had been in effect at the time of the offense. Cal. Penal Code § 1170.18(a).

1 petition is subject to summary dismissal.²

2 Federal habeas corpus relief is available only when a petitioner
3 has been convicted or sentenced in violation of the Constitution,
4 laws, or treaties of the United States; it is not available for errors
5 in the interpretation or application of state law. Swarthout v. Cooke,
6 562 U.S. 216, 219 (2011); Estelle v. McGuire, 502 U.S. 62, 67-68
7 (1991). Petitioner does not allege that he has been deprived of any
8 federally protected right. Instead, his claims are based solely upon
9 alleged errors of state law. As a result, the petition fails to state
10 a cognizable federal claim for relief. See Myles v. Rackley, 2016 WL
11 6298408, at *2 (E.D. Cal. Oct. 27, 2016) (rejecting Proposition 47
12 claims on the ground that “[f]ederal habeas corpus relief is
13 unavailable for alleged errors in the interpretation or application of
14 state sentencing laws by a state court”), report and recommendation
15 adopted, 2016 WL 7212801 (E.D. Cal. Dec. 12, 2016) ; Adams v. Borders,
16 2016 WL 4523163, at *3 (C.D. Cal. July 29, 2016) (“The fact that
17 Petitioner may be attempting to characterize his claim concerning
18 resentencing under Proposition 47 as a federal constitutional claim
19 ... is not sufficient to render it cognizable.”), report and
20 recommendation adopted, 2016 WL 4520906 (C.D. Cal. Aug. 29, 2016).

21 Even if petitioner’s allegations were construed as raising a
22 cognizable federal claim, no such claims have been exhausted. A state
23 prisoner is required to exhaust all available state court remedies
24 before a federal court may grant habeas relief. See 28 U.S.C. §

26 ² Rule 4 of the Rules Governing Section 2254 Cases provides that “[i]f it
27 plainly appears from the petition and any attached exhibits that the
28 petitioner is not entitled to relief in the district court, the judge
must dismiss the petition”

1 2254(b); O'Sullivan v. Boerckel, 526 U.S. 838, 842 (1999). Exhaustion
2 requires that a petitioner "fairly present" his federal claims to the
3 highest state court available. Davis v. Silva, 511 F.3d 1005, 1008
4 (9th Cir. 2008). Petitioner has never presented any claim challenging
5 the denial of resentencing to the California Supreme Court.

6 For the foregoing reasons, the petition for a writ of habeas
7 corpus is dismissed with prejudice. See Givens v. Muniz, 2017 WL
8 387258, at *3 (E.D. Cal. Jan. 26, 2017) (dismissing with prejudice a
9 petition challenging the state court's denial of resentencing under
10 Proposition 47 because such a claim failed to state a cognizable
11 federal claim).³

12 **It is so ordered.**

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14 Dated: September 13, 2017



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17 Dean D. Pregerson
18 United States District Judge
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22 In addition, the Court notes that it appears that petitioner is not
23 entitled to resentencing under Proposition 47 because the law applies
24 only to certain drug offenses codified at Cal. Health and Safety Code §§
25 11350, 11357, and 11377; shoplifting codified at Cal. Penal Code § 459.5;
26 forgery codified at Cal. Penal Code § 473; fraudulent checks codified at
27 Cal. Penal Code § 476a; receipt of stolen property codified at Cal. Penal
28 Code § 496; and petty theft codified at Cal. Penal Code § 666. See Cal.
Penal Code § 1170.18(a); Lopez v. Superior Court of California Cty. of
Los Angeles, 2015 WL 8479227, at *2 (C.D. Cal. Oct. 29, 2015), report and
recommendation adopted, 2015 WL 8374900 (C.D. Cal. Dec. 8, 2015).
However, the offenses to which petitioner pleaded guilty - two counts of
second degree burglary in violation of section 459 of the California
Penal Code - are not among the enumerated offenses to which Proposition
47 applies.

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THE PEOPLE OF THE STATE OF)
CALIFORNIA,)
Respondent.)

It is hereby adjudged that the petition for a writ of habeas corpus is dismissed with prejudice.

Dated:

Dean D. Pregerson
United States District Judge