

1 appeal. She filed numerous petitions in the state courts, which are discussed where
2 relevant below.

3 On January 7, 2019, Petitioner filed this petition for a writ of habeas corpus
4 pursuant to 28 U.S.C. § 2254. The petition raises three claims for relief: (1) the trial
5 court deprived Petitioner of due process by failing to correct a discrepancy between
6 the minute order of Petitioner's sentencing and the abstract of judgment; (2) the trial
7 court failed to conduct a hearing to determine the actual innocence of Gary Rudan
8 (Petitioner's husband and co-defendant); and (3) Petitioner was denied due process
9 by the trial court's failure to conduct a probable cause hearing based upon Petitioner's
10 allegation that her lawyer was ineffective in advising her about the no contest plea.
11 (ECF No. 1 at 5-6, 11.)

12 Respondent filed an Answer to the petition on August 21, 2019. (ECF No. 25.)
13 On October 18, 2019, Petitioner filed a Reply. (ECF No. 30.) For the following
14 reasons, Petitioner is not entitled to relief.

15 EXHAUSTION

16 Respondent argues that Petitioner has failed to exhaust her state remedies with
17 respect to all three claims presented in the petition. (ECF No. 25 at 6; *see* ECF No.
18 10 at 11-13.)

19 Federal habeas relief is not available unless the petitioner has exhausted the
20 remedies available in the state courts. 28 U.S.C. § 2254(b)(1)(A). Exhaustion
21 requires a petitioner to "fairly present" his federal claim to the state's highest court.
22 *Baldwin v. Reese*, 541 U.S. 27, 30 (2004). To satisfy this requirement, a petitioner
23 must describe both the operative facts and the federal legal theory on which his claim
24 is based to the California Supreme Court. *See Gray v. Netherland*, 518 U.S. 152, 162
25 (1996).

26 Contrary to Respondent's contention, reference to the petition filed by
27 Petitioner in the California Supreme Court reveals that she raised essentially the same
28 factual allegations and cited the same federal law as she does in this federal petition.

1 (LD 6.) Although Petitioner’s state habeas petition is not a model of clarity, it is not
2 substantially different from her federal habeas petition. Respondent correctly points
3 out that other than a broad appeal to the Sixth and Fourteenth Amendment and a
4 citation to *Lafler v. Cooper*, 566 U.S. 156 (2012) (holding that defendants are entitled
5 to effective assistance of counsel during plea negotiations), Petitioner’s state habeas
6 corpus petition fails to cite federal legal authority supporting her claims. Yet
7 Petitioner’s federal habeas corpus petition relies on the same limited federal
8 authority. Accordingly, the Court finds that Petitioner has exhausted her state
9 remedies and proceeds to consider the merits of the petition.¹

10 STANDARD OF REVIEW

11 A federal court may not grant a writ of habeas corpus on behalf of a person in
12 state custody

13 with respect to any claim that was adjudicated on the merits in State
14 court proceedings unless the adjudication of the claim (1) resulted in a
15 decision that was contrary to, or involved an unreasonable application
16 of, clearly established Federal law, as determined by the Supreme Court
17 of the United States; or (2) resulted in a decision that was based on an
18 unreasonable determination of the facts in light of the evidence
19 presented in the State court proceeding.

20 28 U.S.C. § 2254(d).

21 As used in section 2254(d)(1), the phrase “clearly established federal law”
22 includes only the holdings, as opposed to the dicta, of Supreme Court decisions
23 existing at the time of the state court decision. *Howes v. Fields*, 565 U.S. 499, 505
24 (2012) (citing *Williams v. Taylor*, 529 U.S. 362, 412 (2000)).

25
26
27 ¹ Respondent also argues that the petition is barred by the statute of limitation. (ECF No. 25 at 6-
28 7.) For the reasons explained in the Court’s order denying Respondent’s motion to dismiss raising
the same argument, the Court exercises its discretion to consider the merits of the petition. (See
ECF No. 18, citing *Lambrix v. Singletary*, 520 U.S. 518, 524-25 (1997).)

1 Under section 2254(d)(1), a state court’s determination that a claim lacks merit
2 precludes federal habeas relief so long as “fairminded jurists could disagree” about
3 the correctness of the state court’s decision. *Harrington v. Richter*, 562 U.S. 86, 101
4 (2011) (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). This is true
5 even where a state court’s decision is unaccompanied by an explanation. In such
6 cases, the petitioner must show that “there was no reasonable basis for the state court
7 to deny relief.” *Harrington*, 562 U.S. at 98. Review of state court decisions under
8 § 2254(d)(1) “is limited to the record that was before the state court that adjudicated
9 the claim on the merits.” *Cullen v. Pinholster*, 563 U.S. 170, 180 (2011).

10 Under section 2254(d)(2), relief is warranted only when a state court decision
11 based on a factual determination is “objectively unreasonable in light of the evidence
12 presented in the state-court proceeding.” *Stanley v. Cullen*, 633 F.3d 852, 859 (9th
13 Cir. 2011) (quoting *Davis v. Woodford*, 384 F.3d 628, 638 (9th Cir. 2004)). Further,
14 state court findings of fact – including a state appellate court’s factual summary – are
15 presumed correct unless rebutted by clear and convincing evidence. 28 U.S.C.
16 § 2254(e)(1); *see Vasquez v. Kirkland*, 572 F.3d 1029, 1031 n.1 (9th Cir. 2009).

17 Here, Petitioner filed a habeas corpus petition in the California Court of Appeal
18 raising essentially the same claims as she does here. (LD 4.) The California Court of
19 Appeal denied the petition in a reasoned decision. (LD 5.) Petitioner then filed a
20 habeas corpus petition in the California Supreme Court. (LD 6.) The California
21 Supreme Court summarily denied the petition. (LD 7.) Thus, the California Court of
22 Appeal’s decision constitutes the relevant state court adjudication for purposes of
23 AEDPA review. *See Ylst v. Nunnemaker*, 501 U.S. 797, 803-804 (1991); *Curiel v.*
24 *Miller*, 830 F.3d 864, 870 (9th Cir. 2016) (en banc).

25 DISCUSSION

26 1. Ground One

27 Petitioner alleges that the trial court deprived her of due process by failing to
28 correct a discrepancy between the minute order of Petitioner’s sentencing and the

1 abstract of judgment. According to Petitioner, as a result of this failure, the California
2 Department of Corrections and Rehabilitation is unable to correctly calculate her
3 sentence. (ECF No. 1 at 5, 11.)

4 Federal habeas corpus relief is available only when a petitioner has been
5 convicted or sentenced in violation of the Constitution, laws, or treaties of the United
6 States. It is not available for errors in the interpretation or application of state law.
7 *Swarthout v. Cooke*, 562 U.S. 216, 219 (2011); *Estelle v. McGuire*, 502 U.S. 62, 67-
8 68 (1991). Petitioner’s allegations here involve solely the interpretation and
9 application of state sentencing law. As such, they fail to present a cognizable federal
10 claim. *See generally Cacoperdo v. Demosthenes*, 37 F.3d 504, 507 (9th Cir. 1994)
11 (“The decision whether to impose sentences concurrently or consecutively is a matter
12 of state criminal procedure and is not within the purview of federal habeas corpus.”);
13 *Miller v. Vasquez*, 868 F.2d 1116, 1118-1119 (9th Cir. 1989) (holding that claim that
14 prior conviction was not a “serious felony” under California’s sentencing law is not
15 cognizable in federal habeas proceeding); *Nelson v. Biter*, 33 F. Supp. 3d 1173, 1176
16 (C.D. Cal. 2014) (claim regarding alleged right to resentencing under California law
17 not cognizable on federal habeas review).

18 Petitioner’s reference to “due process” is insufficient to transform a state law
19 issue into a federal one. *See Langford v. Day*, 110 F.3d 1380, 1389 (9th Cir. 1996).
20 Moreover, while it is true that the misapplication of state law may rise to the level of
21 a due process violation, *see Valencia v. Davey*, 2017 WL 5592994, at *7 & n.8 (C.D.
22 Cal. Oct. 17, 2017), Petitioner has failed to demonstrate any error occurred. Contrary
23 to Petitioner’s allegations, the record reveals no discrepancy between the minute
24 order of sentencing and the abstract of judgment. Both reflect that Petitioner was
25 sentenced to state prison for a term of ten years and eight months, and both are
26 consistent with the court’s oral pronouncement of Petitioner’s sentence after she
27 entered her no contest plea. (ECF No. 1 at 16, 22-25; LD 1 at 7-8; LD 8 at 1, 6.)
28

1 Finally, to the extent that Petitioner contends that she has been denied sentence
2 credits to which she is entitled, that contention was rejected by the California Court
3 of Appeal. As the state appellate court explained, “[b]ecause petitioner’s crimes are
4 violent felonies, she is statutorily limited to conduct credits of no more than 15
5 percent.” (LD 4.) This Court is bound by the state court’s determination of state law.
6 *See Bradshaw v. Richey*, 546 U.S. 74, 76 (2005) (“We have repeatedly held that a
7 state court’s interpretation of state law, including one announced on direct appeal of
8 the challenged conviction, binds a federal court sitting in habeas corpus.”).

9 **2. Ground Two**

10 Petitioner alleges that her co-defendant Gary Rudan is actually innocent of the
11 crimes for which Petitioner was convicted. (ECF No. 1 at 5, 11.) Petitioner lacks
12 standing to raise such a claim on behalf of another. *See Byrd v. Comstock*, 430 F.2d
13 937, 938 (9th Cir. 1970) (per curiam) (“Petitioner may not complain of the violation
14 of his co-defendant’s right, if any occurred.”); *Sisneros v. Neushmid*, 2018 WL
15 2010431, at *12 n.9 (E.D. Cal. Apr. 30, 2018) (petitioners generally lack standing to
16 challenge the infringement of co-defendants’ constitutional rights); *see also Williams*
17 *v. Woodford*, 384 F.3d 567, 593 (9th Cir. 2004) (petitioner lacked standing to
18 complain of infringement on prosecution witness’s constitutional rights).

19 **3. Ground Three**

20 Petitioner alleges that she was denied due process by the trial court’s failure to
21 conduct a probable cause hearing. As apparent support for this claim, Petitioner
22 alleges that she received ineffective assistance of counsel because her attorney failed
23 to explain “the strikes per count” and failed to adequately investigate the firearm
24 allegations which resulted in her offenses being deemed serious or violent felonies.
25 (ECF No. 1 at 6, 11.)

26 As pleaded, Petitioner’s allegations are fairly construed as challenging the trial
27 court’s refusal to issue a certificate of probable cause to appeal from her plea based
28

1 upon her allegations of ineffective assistance of counsel.² Such allegations fail to
2 present a cognizable claim for federal habeas corpus relief. *See Edwards v. Sisto*,
3 2011 WL 3896799, at *13 (C.D. Cal. May 5, 2011) (challenge to trial court’s failure
4 to grant a certificate of probable cause pursuant to California Penal Code section
5 1237.5 failed to state cognizable federal habeas corpus claim), *report and*
6 *recommendation adopted*, 2011 WL 3896928 (C.D. Cal. Sept. 6, 2011).

7 Unlike this Court, Respondent construes Petitioner’s allegations as a challenge
8 to her plea. Even liberally construing the petition to raise such a claim, Petitioner is
9 not entitled to relief.³ A claim of ineffective assistance of counsel in the plea context
10 is analyzed under the familiar two-part test set forth in *Strickland v. Washington*, 466
11 U.S. 668 (1984). *See Hill v. Lockhart*, 474 U.S. 52, 57 (1985); *Hedlund v. Ryan*, 854
12 F.3d 557, 576 (9th Cir. 2017). Pursuant to *Strickland*, a petitioner must demonstrate
13 that (1) counsel’s representation “fell below an objective standard of
14 reasonableness,” and (2) the petitioner was prejudiced by counsel’s deficient
15 performance. *Strickland*, 466 U.S. at 687-688. In the context of a guilty plea,
16 prejudice means showing a reasonable probability that, but for counsel’s deficient
17 performance, the petitioner “would not have pleaded guilty and would have insisted
18 on going to trial.” *Premo v. Moore*, 562 U.S. 115, 129 (2011); *Hill*, 474 U.S. at 59.

21 ² With limited exceptions, a defendant who pleads guilty (or nolo contest) in California may not
22 appeal unless the defendant obtains a certificate of probable cause from the trial court. *See PC*
§ 1237.5; In re Chavez, 30 Cal. 4th 643, 646 (2003).

23 ³ Petitioner did not clearly raise such a claim in her state petitions, and the California Court of
24 Appeal did not recognize it. Nevertheless, this Court may deny a claim on the merits
25 notwithstanding a failure to exhaust state remedies. *See 28 U.S.C. section 2254(b)(2)*. In *Cassett v.*
26 *Stewart*, 406 F.3d 614, 623-624 (9th Cir. 2005), the Ninth Circuit held that dismissal of unexhausted
27 claims is appropriate “only when it is perfectly clear that the applicant does not raise even a
28 colorable federal claim.” In light of *Cassett*, and in an abundance of caution, the Court reviews this
unexhausted claim de novo. *See Phillips v. California*, 2016 WL 8223354, at *28 (C.D. Cal.
Nov. 21, 2016), *report and recommendation adopted*, 2017 WL 520545 (C.D. Cal. Feb. 7, 2017);
Kelly v. Hedgpeth, 2012 WL 1340365, at *6 (C.D. Cal. Jan. 31, 2012).

1 Critically absent from the petition here is any allegation that Petitioner would
2 not have entered the plea agreement if counsel had provided “effective” performance.
3 Nor does anything in the record support such an inference. Indeed, the record
4 supports the contrary conclusion. As Respondent points out, Petitioner received a
5 significant benefit from the plea agreement. (ECF No. 25 at 13.) She was charged
6 with ten counts of burglary and four other counts, subjecting her to a potential prison
7 sentence of more than 69 years. (*See* LD 9.) In exchange for her plea of no contest to
8 three of the charges, Petitioner received a prison sentence of ten years and eight
9 months, and the remaining charges were dismissed. (LD 9.)⁴ In light of the absence
10 of any allegations to the contrary, and considering the fact that Petitioner could have
11 received a term almost seven times the length she actually received had she not
12 pleaded no contest, she has failed to demonstrate that but for counsel’s alleged
13 deficient performance, the outcome of the plea process would have been different.
14 *See Hill*, 474 U.S. at 59; *Mendoza v. Paramo*, 2012 WL 3029781, at *8 (C.D. Cal.
15 June 15, 2012), *report and recommendation adopted*, 2012 WL 3030234 (C.D. Cal.
16 July 23, 2012); *Cuevas v. Hartley*, 2012 WL 12950954, at *8 (C.D. Cal. Feb. 1,
17 2012), *report and recommendation adopted*, 2012 WL 12973173 (C.D. Cal. Mar. 16,
18 2012), *aff’d*, 674 F. App’x 724 (9th Cir. 2017).

19 **ORDER**

20 IT IS THEREFORE ORDERED that Judgment be entered denying the petition
21 and dismissing this action with prejudice.

22
23 DATED: 10/23/2019

24 

25 ALEXANDER F. MacKINNON
26 UNITED STATES MAGISTRATE JUDGE

27 ⁴ Among other things, the plea colloquy confirms that Petitioner was informed of, and
28 acknowledged understanding, the length of her sentence and that the offenses to which she agreed
to plead no contest were considered serious and violent felonies. (*See* LD 8 at 2-8.)