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

CLINTON DOUGLAS KING,	)	Case No. CV 20-1766-RGK (JPR)
	)	
Petitioner,	)	
	)	ORDER ACCEPTING FINDINGS AND
v.	)	RECOMMENDATIONS OF U.S.
	)	MAGISTRATE JUDGE
DANIEL E. CUEVA, Acting	)	
Warden,	)	
	)	
Respondent.	)	

The Court has reviewed the Petition, records on file, and Report and Recommendation of U.S. Magistrate Judge, which recommends that the Petition be denied and this action be dismissed. On January 25, 2021, Petitioner filed objections to the R. & R.; Respondent did not reply.

In his objections, Petitioner mostly simply repeats arguments from his Petition and his opposition to the motion to dismiss. For instance, he asserts that his proposition claims are cognizable on habeas review and not untimely because the claims were "not presented in a prior application" and rely "on a new rule of constitutional law." (Objs. at 2.) But as the Magistrate Judge noted, these claims are not cognizable on federal habeas review because they concern state law only, and

1 that law's discretionary nature forecloses any procedural due  
2 process argument. (See R. & R. at 5-9, 10.)

3 Petitioner also objects to the Magistrate Judge's finding  
4 that his three-strikes-sentence claim was improperly successive.  
5 (Objs. at 3.) He argues that the claim is not successive "due to  
6 the judgment challenged," citing Magwood v. Patterson, 561 U.S.  
7 320 (2010). (Objs. at 3.) Magwood held that a habeas  
8 petitioner's challenge to his second death sentence was not  
9 improperly successive because an intervening judgment had been  
10 entered on resentencing. 561 U.S. at 341-42. As the Magistrate  
11 Judge noted (R. & R. at 14), there has been no intervening  
12 judgment here. Therefore, unlike the petitioner in Magwood,  
13 Petitioner is attempting to challenge his original judgment in an  
14 improperly successive petition. See Cole v. Sullivan, 480 F.  
15 Supp. 3d 1089, \_\_\_, 2020 WL 4905528, at \*5 (C.D. Cal. Aug. 19,  
16 2020).

17 Having reviewed de novo those portions of the R. & R. to  
18 which Petitioner objects, the Court agrees with and accepts the  
19 findings and recommendations of the Magistrate Judge. IT  
20 THEREFORE IS ORDERED that judgment be entered denying the  
21 Petition and dismissing this action with prejudice except for  
22 Petitioner's three-strikes claim, which is dismissed without  
23 prejudice.

24 DATED: February 16, 2021



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R. GARY KLAUSNER  
U.S. DISTRICT JUDGE