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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ANTHONY GOODEN,

Petitioner,

v.

TRACY JOHNSON, Warden,

Respondent.

Case No. 2:24-cv-02648-DDP-PD

**ORDER TO SHOW CAUSE RE:
DISMISSAL OF PETITION**

On March 25, 2024, Petitioner Anthony Gooden, proceeding pro se, filed a Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254. The Court issues this Order to Show Cause directed to Petitioner because the face of the Petition suggests that he has failed to state a cognizable claim on federal habeas review.

I. Procedural History and Petitioner's Contentions

In August 2013, Petitioner pleaded guilty in San Bernardino County Superior Court to first-degree murder and admitted that he personally used a firearm. [See Dkt. No. 1 at 9.] He was sentenced to 35 years to life in state prison. [See *id.*] He did not appeal. [See *id.* at 12.]

1 On May 30, 2023, Petitioner filed a habeas petition in the superior
2 court, alleging that he was entitled to resentencing under California Assembly
3 Bill 1540 and California Penal Code sections 1170.03 and 1172.1.¹ [*See id.* at
4 9.] On May 22, 2023, the superior court denied the petition in a reasoned
5 decision. [*See id.* at 9-11.] Petitioner then filed three habeas petitions in the
6 California Court of Appeal, which summarily denied each of them. *See* Cal.
7 App. Cts. Case Info. <http://appellatecases.courtinfo.ca.gov/> (search for
8 “Anthony” and “Gooden” in 4th App. Dist., Div. 2) (last visited on May 10,
9 2024). Thereafter, on October 19, 2023, he filed a habeas petition in the
10 California Supreme Court, which summarily denied it on January 31, 2024.
11 *See id.* (search for Case No. S282348 in Cal. Sup. Ct.).

12 On March 25, 2024, Petitioner filed the instant Petition. Liberally
13 construed, *see Woods v. Carey*, 525 F.3d 886, 889-90 (9th Cir. 2008) (district
14 courts are obligated to liberally construe pro se litigant filings), the Petition
15 states the following ground for relief: the state courts violated Petitioner’s
16 right to due process by refusing to resentence him because, under California
17 Assembly Bill 600, trial courts now have discretion to recall sentences under
18 California Penal Code section 1172.1. [*See* Dkt. No. 1 at 15 (citing Cal.
19 Assemb. Bill 600).] He seeks “resentencing under PC 1172.1/AB 600.” [*Id.* at
20 28.]

21 **II. Discussion**

22 **A. Duty to Screen**

23 Rule 4 of the Rules Governing § 2254 Cases requires the Court to
24 conduct a preliminary review of the Petition. Pursuant to Rule 4, the Court
25 must summarily dismiss a petition “[i]f it plainly appears from the face of the

26 ¹ California Assembly Bill No. 1540, which took effect January 1, 2022, renumbered
27 section 1170(d)(1) as section 1170.03, *see People v. McMurray*, 76 Cal. App. 5th 1035,
28 1038 (2022), and thereafter, Assembly Bill No. 200, which took effect on June 30, 2022,
renumbered section 1170.03 as section 1172.1. *See People v. Trent*, 96 Cal. App. 5th
33, 41 n.7 (2023) (citations omitted).

1 petition . . . that the petitioner is not entitled to relief in the district court.”
2 Rule 4 of the Rules Governing 2254 Cases; *see also Hendricks v. Vasquez*, 908
3 F.2d 490 (9th Cir. 1990). As explained below, a review of the Petition shows
4 that it is subject to dismissal because its sole claim for relief is not cognizable.

5 **B. Failure to State a Cognizable Claim**

6 Federal habeas relief is available to state inmates who are “in custody
7 in violation of the Constitution or laws or treaties of the United States.” 28
8 U.S.C. § 2254(a). “Absent a showing of fundamental unfairness, a state
9 court’s misapplication of its own sentencing laws does not justify federal
10 habeas relief.” *Christian v. Rhode*, 41 F.3d 461, 469 (9th Cir. 1994). “A
11 habeas petitioner must show that an alleged state sentencing error was ‘so
12 arbitrary or capricious as to constitute an independent due process violation.’”
13 *Nelson v. Biter*, 33 F. Supp. 3d 1173, 1177 (C.D. Cal. 2014) (quoting *Richmond*
14 *v. Lewis*, 506 U.S. 40, 50 (1992)).

15 Petitioner’s claim is premised on the change in California law
16 occasioned by Assembly Bill No. 600. [See Dkt. 1 at 15-17, 28.] Assembly Bill
17 No. 600, which took effect on January 1, 2024, amended California Penal Code
18 section 1172.1 “to allow a trial court, on its own motion, to recall a sentence
19 and resentence a defendant when ‘applicable sentencing laws at the time of
20 the original sentencing are subsequently changed by new statutory authority
21 or case law.’” *People v. Dain*, 99 Cal. App. 5th 399, 412 (2024) (quoting Cal.
22 Penal Code § 1172.1 (a)(1), as amended by Stats. 2023, ch. 446, § 2.) Prior to
23 January 1, 2024, trial courts lacked authority to do so unless the sentence was
24 unauthorized or the Secretary of the California Department of Corrections
25 and Rehabilitation recommended the sentence be recalled. *See People v.*
26 *Codinha*, 92 Cal. App. 5th 976, 986-97 (2023).

27 Petitioner’s claim is not cognizable on federal habeas review because it
28 is premised exclusively on an issue of state law – namely, whether the trial

1 court should exercise its discretion under section 1172.1 to recall his sentence
2 and resentence him. *See, e.g., Mills v. Marsh*, No. 2:19-cv-05237-DDP-MAA,
3 2020 WL 1180433, at *3 (C.D. Cal. Jan. 9, 2020) (holding that petitioner’s
4 claim “hing[ing] on whether he [was] entitled to relief pursuant to [s]ection
5 1170(d)(1)” was not cognizable on federal habeas review because it concerned
6 “question pertaining solely to state law”), *accepted by* 2020 WL 5202073 (C.D.
7 Cal. Sept. 1, 2020); *Nichols v. Pfeiffer*, No. CV 19-6356 DSF (JC), 2019 WL
8 4014429, at *7 (C.D. Cal. Aug. 26, 2019) (finding claims predicated on CDCR’s
9 “fail[ure] to follow applicable rules related to petitioner’s request to have the
10 CDCR request to recall [his] sentence under section 1170(d)(1)” not cognizable
11 because they concerned only state law); *Harris v. Valenzuela*, No. CV 14-7692-
12 R (MAN), 2014 WL 4988150, at *3 (C.D. Cal. Oct. 7, 2014) (holding that claim
13 premised on misapplication of section 1170, “even if it were correct,
14 necessarily fails here, because it does not implicate any federal constitutional
15 concern rectifiable through a grant of federal habeas relief” (citation omitted));
16 *see also Ransom v. Adams*, 313 F. App’x 948, 949 (9th Cir. 2009) (affirming
17 summary dismissal of claim that petitioner was entitled to compassionate
18 release under California Penal Code section 3076(b) because claim involved
19 only state officials’ failure to follow state law).

20 Furthermore, that Petitioner alludes to his right to due process [*see* Dkt.
21 No. 1 at 16)] is insufficient to transform his state-law claim into a cognizable
22 federal one. *See Gray v. Netherland*, 518 U.S. 152, 163 (1996) (explaining that
23 petitioner may not convert state-law claim into federal one by making general
24 appeal to constitutional guarantee); *see also Cacoperdo v. Demosthenes*, 37
25 F.3d 504, 507 (9th Cir. 1994) (habeas petitioner’s mere reference to Due
26 Process Clause was insufficient to render his claims viable under 14th
27 Amendment). And in any event, he cannot show his 35-years-to-life sentence
28 was arbitrary or capricious or fundamentally unfair because he was convicted

1 of first-degree murder and admitted that he personally used a firearm in
2 doing so. *See Nash v. Foulk*, No. CV 14-5494 JVS (SS), 2015 WL 9450401, at
3 *8-9 (C.D. Cal. Oct. 27, 2015) (finding that life-without-possibility-of-parole
4 sentence for first-degree murder was not fundamentally unfair and could not
5 support viable due-process claim), *accepted by* 2015 WL 9455520 (C.D. Cal.
6 Dec. 21, 2015); *Mains v. Lizarraga*, No. 14-cv-0504-JAM-EFB-P, 2016 WL
7 6134472, at *13 (E.D. Cal. Oct. 20, 2016) (finding that state sentence of 50-
8 years-to-life for first-degree murder and use of firearm was not fundamentally
9 unfair).

10 Petitioner, likewise, cannot show that he has a protected liberty interest
11 in being resentenced under section 1172.1. “There is no constitutional or
12 inherent right of a convicted person to be conditionally released before the
13 expiration of a valid sentence.” *Greenholtz v. Inmates of Neb. Penal & Corr.*
14 *Complex*, 442 U.S. 1, 7 (1979). A state statute may, however, confer a liberty
15 interest under the Due Process Clause when it places substantive limits on
16 official discretion. *Ky. Dep’t of Corrs. v. Thompson*, 490 U.S. 454, 462 (1989).
17 To give rise to a liberty interest, the statute must contain “explicitly
18 mandatory language,’ *i.e.*, specific directives to the decisionmaker that if the
19 [statute’s] substantive predicates are present, a particular outcome must
20 follow.” *Id.* at 463 (quoting *Hewitt v. Helms*, 459 U.S. 460 (1983)).

21 The section 1172.1 procedure for resentencing, however, is permissive,
22 not mandatory. Indeed, section 1172.1(a)(1) provides that a court “may . . .
23 recall the sentence and commitment previously ordered and resentence the
24 defendant in the same manner as if they had not previously been sentenced.”
25 It does not confer any right on a prisoner to file a request for resentencing
26 directly with the trial court, as the superior court noted in rejecting
27 Petitioner’s habeas petition. [See Dkt. No. 1 at 11]; *People v. Pritchett*, 20 Cal.
28 App. 4th 190, 193-94 (1993) (“[B]ecause the defendant has no right to request

1 such an order in the first instance,” “his ‘substantial rights’ cannot be affected
2 by an order denying that which he had no right to request.” (citation
3 omitted)). There is therefore no basis for finding that section 1172.1 gives rise
4 to a liberty interest enforceable as a matter of federal due process. *See*
5 *Gonzales v. Marshall*, No. CV 08-5102-FMC(E), 2008 WL 5115882, at *5 (C.D.
6 Cal. Dec. 4, 2008) (finding that predecessor to section 1172.1 “does not confer
7 any liberty interest protected by the Due Process Clause”).

8 Finally, the Court also notes that the Petition’s sole claim for relief is
9 unexhausted. *See Rose v. Lundy*, 455 U.S. 509, 518 (1982) (federal court will
10 not grant state prisoner’s petition for habeas relief until prisoner has
11 exhausted his available state remedies for all claims raised). As related
12 above, it is premised on changes to California law that took effect on January
13 1, 2024. [*See* Dkt. No. 1 at 15, 28]; *Dain*, 99 Cal. App. 5th at 412. Petitioner
14 has not filed any habeas petitions in either the court of appeal or the
15 California Supreme Court since that date. *See* Cal. App. Cts. Case Info.
16 <http://appellatecases.courtinfo.ca.gov/> (search for “Anthony” and “Gooden” in
17 4th App. Dist., Div. 2 and Cal. Sup. Ct.) (last visited on May 10, 2024). As
18 such, he has not fairly presented his claim to the state’s highest court. *See*
19 *James v. Borg*, 24 F.3d 20, 24 (9th Cir. 1994) (exhaustion requires that
20 prisoner’s contentions be fairly presented to state courts and be disposed of on
21 merits by state’s highest court). Nevertheless, the Court may deny it on the
22 merits because, as explained above, it is based exclusively on state law, *see* 28
23 U.S.C. § 2254, and therefore does not present a colorable claim for relief, *see*
24 *Cassett v. Stewart*, 406 F.3d 614, 624 (9th Cir. 2005) (“[A] federal court may
25 deny an unexhausted petition on the merits only when it is perfectly clear
26 that the applicant does not raise even a colorable federal claim.”).

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III. Conclusion

For the foregoing reasons, the Court **ORDERS** Petitioner to show cause **by no later than June 16, 2024**, as to why the Petition should not be summarily denied for failure to allege a cognizable claim.

Petitioner is admonished that the Court will construe his failure to file a response to this Order by June 16, 2024, as a concession on his part that the Petition’s sole claim for relief is not cognizable. In that event, the Court will recommend that the Petition be dismissed with prejudice for failure to allege a cognizable claim.

IT IS SO ORDERED.

DATED: May 13, 2024



PATRICIA DONAHUE
UNITED STATES MAGISTRATE JUDGE