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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSHUA T. WOOLRIDGE,)	NO. EDCV 12-62-R (MAN)
)	
Petitioner,)	
)	
v.)	ORDER: DISMISSING PETITION
)	
WARDEN AREF FAKHOURY,)	WITHOUT PREJUDICE; AND DENYING
)	
Respondent.)	CERTIFICATE OF APPEALABILITY
_____)	

On January 12, 2012, Petitioner, a California prisoner, filed a habeas petition pursuant to 28 U.S.C. § 2254 ("Petition"). Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts provides that a petition for writ of habeas corpus "must" be summarily dismissed "[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court." Here, it plainly appears that the claim raised in the Petition is not cognizable and could not state a basis for federal habeas relief even if amendment were allowed. Therefore, the Petition must be dismissed.

1 **BACKGROUND**

2

3 The instant Petition is Petitioner's fifth Section 2254 petition
4 filed in this Court stemming from his 2005 state court conviction and
5 sentence (the "Conviction"). On November 9, 2007, Petitioner filed a
6 habeas petition that was assigned Case No. EDCV 07-1482-R (MAN) (the
7 "First Action"). On September 10, 2008, Petitioner filed a second
8 Section 2254 habeas petition stemming from the Conviction, which was
9 assigned Case No. EDCV 08-1237-R (MAN). The second petition raised two
10 claims attacking a restitution fine imposed in connection with the
11 Conviction. On November 24, 2008, the Court ordered that the second
12 petition be construed as a motion to amend the First Action Petition,
13 and the separate second petition action was dismissed. On April 9,
14 2009, Petitioner submitted a third Section 2254 petition stemming from
15 the Conviction, which alleged five claims. The third petition also was
16 construed as a motion to amend the First Action petition. Accordingly,
17 as so amended, the First Action petition was deemed to include all 16
18 claims alleged in the three Section 2254 petitions submitted by
19 Petitioner arising from the Conviction.

20

21 The First Action was resolved on the merits, and habeas relief was
22 denied by Judgment entered on May 18, 2010. Petitioner appealed to the
23 United States Court of Appeals for the Ninth Circuit, and a certificate
24 of appealability was denied on July 30, 2010 (Case No. 10-56078).¹

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27 ¹ Pursuant to Rule 201 of the Federal Rules of Evidence, the
28 Court takes judicial notice of the files for Petitioner's cases in this
district, as well as the dockets for the Ninth Circuit available
electronically through the PACER system.

1 On May 11, 2011, Petitioner filed a fourth Section 2254 petition in
2 this district, in which he alleged a single instructional error claim.
3 See petition filed in Case No. CV 11-752-R (MAN). On May 24, 2011,
4 Judgment was entered dismissing the 11-752 action without prejudice, on
5 the ground that the petition was second or successive. Petitioner did
6 not appeal.

7
8 **PETITIONER'S HABEAS CLAIM**
9

10 Petitioner alleges that, after he was convicted and sentence was
11 imposed, the California Legislature modified a statute pertaining to
12 both pre-sentence and post-sentence custody credits, *i.e.*, California
13 Penal Code § 4109. He contends that he is entitled to a retroactive
14 application of that amended statute, so as to alter the custody credits
15 determination made in 2005, when he was sentenced. Petitioner labels
16 the failure to apply the statute retroactively to him a federal due
17 process violation. (Petition at 5.)

18
19 **DISCUSSION**
20

21 It is well-settled that federal habeas relief is available only to
22 state prisoners who are "in custody in violation of the Constitution or
23 laws or treaties of the United States." 28 U.S.C. §§ 2241, 2254; see
24 also Estelle v. McGuire, 502 U.S. 62, 68, 112 S. Ct. 475, 480
25 (1991)(same); Smith v. Phillips, 455 U.S. 209, 221, 102 S. Ct. 940, 948
26 (1982)(federal habeas courts "may intervene only to correct wrongs of
27 constitutional dimension"). Absent an independent federal
28 constitutional violation, "it is not the province of a federal habeas

1 court to re-examine state-court determinations on state-law questions."
2 Estelle, 502 U.S. at 68, 112 S. Ct. at 480; Little v. Crawford, 449 F.3d
3 1075, 1083 n.6 (9th Cir. 2006)(observing that a showing of a possible
4 "'variance with the state law'" does not constitute a federal question,
5 and that federal courts "'cannot treat a mere error of state law, if one
6 occurred, as a denial of due process; otherwise, every erroneous
7 decision by a state court on state law would come here as a federal
8 constitutional question'" ; citation omitted); Bonin v. Calderon, 59 F.3d
9 815, 841 (9th Cir. 1995)(violation of a "state law right does not
10 warrant habeas corpus relief").

11
12 Generally, a challenge to a state court's application of state
13 sentencing laws does not create a federal question cognizable on federal
14 habeas review. See, e.g., Lewis v. Jeffers, 497 U.S. 764, 780, 110 S.
15 Ct. 3092, 3102 (1990); Campbell v. Blodgett, 997 F.2d 512, 522-24 (9th
16 Cir. 1992)("As the Supreme Court has stated time and again, federal
17 habeas corpus relief does not lie for errors of state law."); Miller v.
18 Vasquez, 868 F.2d 1116, 1118-19 (9th Cir. 1989). "Absent a showing of
19 fundamental unfairness, a state court's misapplication of its own
20 sentencing laws does not justify federal habeas relief." Christian v.
21 Rhode, 41 F.3d 461, 469 (9th Cir. 1994); see also Cacoperdo v.
22 Demosthenes, 37 F.3d 504, 506 (9th Cir. 1994)(petitioner's claim that
23 the state court erred in imposing consecutive sentences was not
24 cognizable in federal habeas); Hendricks v. Zenon, 993 F.2d 664, 674
25 (9th Cir. 1993)(defendant's claim that state court was required to merge
26 his convictions was not cognizable). To state a cognizable federal
27 habeas claim based on an alleged sentencing error by a state court, a
28 habeas petitioner must show that the asserted sentencing error was "'so

1 arbitrary or capricious as to constitute an independent due process''
2 violation. Richmond v. Lewis, 506 U.S. 40, 50, 113 S. Ct. 528, 536
3 (1992)(citation omitted).

4
5 Petitioner's entitlement to a retroactive application of California
6 Penal Code § 4109 is unclear at this time. Even the most cursory
7 research reveals that the California Courts of Appeal have wrestled with
8 this issue and have reached contradictory conclusions. For example,
9 last month, the Second Appellate District of the California Court of
10 Appeal (the district in which Petitioner was convicted) opined that the
11 amended version of Section 4109 may not be applied retroactively to
12 California prisoners, such as Petitioner, whose convictions were final
13 when the amendment took effect. See People v. Florez, 2011 WL 6276122
14 (Cal. App. 2 Dist. Dec. 16, 2011).² More recently, the Fourth Appellate
15 District found the amended version of Section 4109 to be retroactively
16 applicable. See People v. Hirk, 2012 WL 12869 (Cal. App. 4 Dist. Jan.
17 4, 2012). The California Supreme Court has granted review in numerous
18 cases involving the issue of the retroactive applicability of the
19 amendment to Section 4109. See Hirk, 2012 WL 12869, at *3 ("The
20 California Supreme Court has granted review of the issue and will have
21 the final say on the matter.")(citing ten cases in which review has been
22 granted); Florez, 2011 WL 6276122, at *2 n.2 ("California courts are
23 divided on the retroactive application of the . . . amendment and the
24 issue is now before the Supreme Court.")(citing cases in which review

25
26 ² Under California Rule of Court 8.1115, the Florez decision and
27 the other California decision cited herein are not citable in the
28 California courts, because they are unpublished. The Court cites them
not for precedential value but, rather, simply to provide examples of
the conflicting opinions that exist at this time.

1 has been granted). Thus, Petitioner's asserted right to have the
2 amended version of Section 4109 applied to amend retroactively his 2005
3 custody credits determination is an open question under California law.
4

5 The Court has construed the Petition as liberally as possible.
6 Having done so, it is evident that the Petitioner's allegations set forth
7 only a claim of state law error and do not state any cognizable basis
8 for federal habeas relief. Petitioner claims to be entitled to the
9 benefit of a state law that may be found not to apply to him. Any right
10 Petitioner may have to a retroactive application of Section 4109 is an
11 issue still to be resolved by the California Supreme Court. This Court
12 cannot render an opinion on this state law issue, much less determine
13 how California law should be resolved on this open question of
14 California sentencing law. Federal habeas review does not exist to
15 supplant the state courts' power to interpret state law.
16

17 Given that the question of whether Section 4109 may be applied
18 retroactively to California prisoners is the subject of contradictory
19 state court opinions and is now pending before the California Supreme
20 Court, the denial to Petitioner of a retroactive application of the
21 statute cannot be found to be erroneous, arbitrary, capricious, or
22 fundamentally unfair, nor does it implicate any federal constitutional
23 concern. Petitioner's attempt to create a federal claim -- by labeling
24 this purely state law issue as a "due process" violation -- necessarily
25 fails. See Langford v. Day, 110 F.3d 1380, 1389 (9th Cir. 1997)(a
26 petitioner may not "transform a state-law issue into a federal one
27 merely by asserting a violation of due process," and "alleged errors in
28 the application of state law are not cognizable in federal habeas

1 corpus" proceedings).

2

3 The Petition, on its face, shows that Petitioner is not entitled to
4 relief, and thus, summary dismissal is required pursuant to Rule 4.
5 Accordingly, IT IS ORDERED that: the Petition is dismissed, without
6 prejudice; and Judgment shall be entered dismissing this action without
7 prejudice.

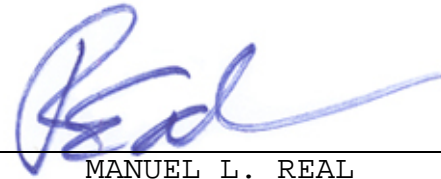
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9 In addition, pursuant to Rule 11(a) of the Rules Governing Section
10 2254 Cases in the United States District Courts, the Court has
11 considered whether a certificate of appealability is warranted in this
12 case. See 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 484-
13 85, 120 S. Ct. 1595, 1604 (2000). The Court concludes that a
14 certificate of appealability is unwarranted, and thus, a certificate of
15 appealability is DENIED.

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17 DATED: Jan. 23, 2012 .

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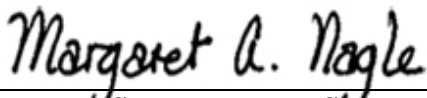
MANUEL L. REAL
UNITED STATES DISTRICT JUDGE

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21 PRESENTED BY:

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MARGARET A. NAGLE
UNITED STATES MAGISTRATE JUDGE

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