UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BRENT D'VAUGHN ALVES, SR., Petitioner, v. JOHN MCCOHN, Respondent.	Case No. EDCV 16-0848-JEM MEMORANDUM OPINION AND ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS AND DENYING CERTIFICATE OF APPEALABILITY

PROCEEDINGS

On April 28, 2016, Brent D'Vaughn Alves, Sr. ("Petitioner"), a prisoner in state custody, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. Section 2254 ("Petition"). On August 18, 2016, Respondent filed an Answer. On August 29, 2016, Petitioner filed a Reply.

Pursuant to 28 U.S.C. § 636(c), both parties have consented to proceed before this Magistrate Judge. The matter is now ready for decision. For the reasons set forth below, the Court finds that the Petition should be denied.

PRIOR PROCEEDINGS

On February 11, 2014, in San Bernardino County Superior Court, Petitioner pled no contest to possession for sale of methamphetamine (Cal. Health & Safety Code § 1138)

and possession for sale of marijuana (Cal. Health & Safety Code § 11359) and admitted having two prior narcotics convictions (Cal. Health & Safety Code § 11370.2(c)) and having served four prior prison terms (Cal. Penal Code § 667.5(b)). He was sentenced to six years in state prison, which was suspended, and placed on three years of felony probation. (Respondent's Lodged Document ("LD") 1 at 103-105, 110-113; see also LD 6 at 1.)

Petitioner appealed to the California Court of Appeal pursuant to People v. Wende, 25 Cal.3d 436 (1979), and Anders v. California, 386 U.S. 738 (1967). (LD 3.) On December 4, 2014, the judgment was affirmed in an unpublished opinion. (LD 4.)

In April 2015, Petitioner admitted to a violation of probation. He was reinstated on probation, and the matter was referred to the probation department. (LD 6 at 1.) Ultimately, the superior court found that Petitioner had violated his felony probation and imposed the six year sentence, but ordered three years suspended on mandatory supervision with specified terms. As to the three years Petitioner was to serve in custody, the court credited him 155 actual days and 155 conduct days, for a total of 310 days. (LD 6 at 2.)

On November 3, 2015, Petitioner filed a habeas petition in the San Bernardino County Superior Court. (LD 5.) On November 30, 2015, the superior court denied some of the claims raised in the petition on the merits and ordered an informal response on the remaining claim that Petitioner was improperly denied custody credits for the time between his initial sentencing in February 2014 until his subsequent sentencing on the April 2015 violation. (LD 6.) On February 19, 2016, the superior court denied the remaining claim on the merits, finding that Petitioner had been on felony probation during the time period at issue and, therefore, was not entitled to custody credits. (LD 9.)

On March 1, 2016, Petitioner filed a habeas petition in the California Court of Appeal (LD 10), which was summarily denied on March 8, 2016 (LD 11).

On March 17, 2016, Petitioner filed a petition for review in the California Supreme Court (LD 12), which was summarily denied on April 20, 2016 (LD 13).

The instant Petition was filed on April 28, 2016.

PETITIONER'S CLAIM

Petitioner claims that the state courts improperly denied him custody credits for the period between his initial sentencing in February 2014 and his subsequent sentencing on the April 2015 violation. Specifically, Petitioner contends that the period at issue was spent on mandatory supervision, for which he was entitled to custody credits, rather than on felony probation as the state courts found and for which he was not entitled to custody credits. (Pet. at 5-6.)[1]

STANDARD OF REVIEW

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") governs the Court's consideration of Petitioner's cognizable federal claims. 28 U.S.C. § 2254(d), as amended by AEDPA, states:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim - (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

Clearly established federal law is "the governing principle or principles set forth by the Supreme Court at the time the state court renders its decision." Lockyer v. Andrade,

[1] The Court refers to the pages of the Petition and other documents submitted to the Court as numbered by the CM/ECF system.

538 U.S. 63, 71-72 (2003). Precedent is not "clearly established" law under § 2254(d)(1) "unless it 'squarely addresses the issue' in the case before the state court [citation omitted] or 'establishes a legal principle that clearly extends' to the case before the state court." Andrews v. Davis, 798 F.3d 759, 773 (9th Cir. 2015) (quoting Wright v. Van Patten, 552 U.S. 120, 125-26 (2008), and Moses v. Payne, 555 F.3d 742, 754 (9th Cir. 2008)); see also Carey v. Musladin, 549 U.S. 70, 76-77 (2006). "[I]f a habeas court must extend a rationale before it can apply to the facts at hand, then by definition the rationale was not clearly established at the time of the state-court decision." White v. Woodall, 134 S. Ct. 1697, 1706 (2014). "Section 2254(d)(1) . . . does not require state courts to extend [Supreme Court] precedent or license federal courts to treat the failure to do so as error." Id. "A principle is clearly established law governing the case 'if, and only if, it is so obvious that a clearly established rule applies to a given set of facts that there could be no fairminded disagreement on the question.'" Andrews, 798 F.3d at 774 (quoting White, 134 S. Ct. at 1706-07).

A federal habeas court may grant relief under the "contrary to" clause if the state court "applies a rule that contradicts the governing law set forth in [Supreme Court] cases," or if it decides a case differently than the Supreme Court has done on a set of materially indistinguishable facts. Williams v. Taylor, 529 U.S. 362, 405-406 (2000). "The court may grant relief under the 'unreasonable application' clause if the state court correctly identifies the governing legal principle . . . but unreasonably applies it to the facts of a particular case." Bell v. Cone, 535 U.S. 685, 694 (2002). The "unreasonable application" clause requires that the state court decision be more than "incorrect or erroneous." Andrews, 798 F.3d at 774. "The pivotal question is whether the state court's application of [the law] was unreasonable." Harrington v. Richter, 562 U.S. 86, 101 (2011).

A state court need not cite Supreme Court precedent when resolving a habeas corpus claim. See Early v. Packer, 537 U.S. 3, 8 (2002). "[S]o long as neither the

reasoning nor the result of the state-court decision contradicts [Supreme Court precedent,]" the state court decision will not be "contrary to" clearly established federal law. Id.

A state court's factual determination is not unreasonable "merely because the federal habeas court would have reached a different conclusion in the first instance." Wood v. Allen, 558 U.S. 290, 301 (2010). Rather, § 2254(d)(2) requires federal habeas courts to "accord the state trial court substantial deference." Brumfield v. Cain, 135 S. Ct. 2269, 2277 (2015). Where "'[r]easonable minds reviewing the record might disagree' about the finding in question, 'on habeas review that does not suffice to supersede the trial court's . . . determination.'" Wood, 558 U.S. at 301 (quoting Rice v. Collins, 546 U.S. 333, 341-42 (2006)). However, "[e]ven in the context of federal habeas, deference does not imply abandonment or abdication of judicial review," and "does not by definition preclude relief." Miller-El v. Cockrell, 537 U.S. 322, 340 (2003).

In deciding a habeas petition, a federal court is not called upon to decide whether it agrees with the state court's determination. Rather, § 2254(d) "sets forth a 'highly deferential standard, which demands that state-court decisions be given the benefit of the doubt.'" Andrews, 798 F.3d at 774 (quoting Cullen v. Pinholster, 563 U.S. 170, 181 (2011)). While not a complete bar on the relitigation of claims already rejected in state court proceedings, § 2254(d) merely "'preserves authority to issue the writ in cases where there is no possibility fairminded jurists could disagree that the state court's decision conflicts with [Supreme Court precedent]' and 'goes no further.'" Andrews, 798 F.3d at 774 (quoting Harrington, 562 U.S. at 102). "[E]ven a strong case for relief does not mean that the state court's contrary conclusion was unreasonable." Harrington, 562 U.S. at 102.

The federal habeas court "looks through" a state court's silent decision to the last reasoned decision of a lower state court, and applies the AEDPA standard to that decision. See Ylst v. Nunnemaker, 501 U.S. 797, 803 (1991) ("Where there has been one reasoned

state judgment rejecting a federal claim, later unexplained orders upholding the judgment or rejecting the same claim rest upon the same ground.").

Petitioner's claim was adjudicated on the merits by the San Bernardino County Superior Court in a reasoned opinion on habeas review. (LD 9.) The California Court of Appeal and California Supreme Court summarily denied review. (LD 11, 13.) Thus, the Court looks through the California Supreme Court's and California Court of Appeal's silent denials to the Superior Court's reasoned decision and applies the AEDPA standard to that decision. See Ylst, 501 U.S. at 803.

DISCUSSION

Ground One Does Not Warrant Federal Habeas Relief

In Ground One, Petitioner contends that the state courts improperly denied him custody credits for the time between his initial sentencing in February 2014 and his subsequent probation violation in April 2015. (Pet. at 5-6.) This claim is without merit.

A. State Court Decision and State Law Regarding Custody Credits

The California Court of Appeal addressed Petitioner's claim as follows:

> On February 11, 2014, pursuant to a plea agreement, petitioner pled guilty to various drug related felonies and admitted a number of allegations. He was sentenced to 6 years state prison, however, this sentence was suspended and he was placed on three years felony probation. He was given 90 days credit.[fn] However the relevant minute order *mistakenly* states he was placed on 3 years mandatory supervision.
>
> Petitioner has filed a writ of habeas corpus asserting that the court wrongfully denied him credits for the days he was on mandatory supervision. . . .
>
> A review of the transcript of the proceedings on February 11, 2014, makes it clear that petitioner was placed on felony probation and not on mandatory supervision. Therefore, he could not and did not earn any mandatory supervision

credits. Later references to mandatory supervision that are contained in the court's minute orders and one probation report reflect *scrivener's errors*.

(LD 9 at 1-3 (footnotes omitted) (emphasis added).) Thus, the superior court found that, in fact, Petitioner had not been on mandatory supervision from the time of his guilty plea until he was sentenced on the violation, but had been on felony probation during that period.

California Penal Code § 2900.5 provides for the award of credits for time spent in custody, including time spent in custody after sentencing as a condition of probation. People v. Johnson, 28 Cal.4th 1050, 1053 (2002). "While no hard and fast rule can be derived from the cases, the concept of custody generally connotes a facility rather than a home. It includes some aspect of regulation of behavior. It also includes supervision in a structured life style." People v. Reinertson, 178 Cal. App. 3d 320, 327 (1986); accord People v. Pottorff, 47 Cal. App. 4th 1709, 1717-18 (1996). Consequently, time spent on probation outside of a custodial facility will not qualify for credits under Cal. Penal Code § 2900.5. See, e.g., Pottorff, 47 Cal. App. 4th at 1717-20 (no custody credits for defendant subject to electronic home monitoring pursuant to Cal. Penal Code § 1203.016); Reinertson, 178 Cal. App. 3d at 327 (no custody credits for defendant subject to home detention as a probation condition); In re Debra S., 135 Cal. App. 3d 378, 385-86 (1982) (no custody credits for juvenile subject to probation conditions that she live at home, attend school daily, participate in therapy and an after-school program, advise her mother of her whereabouts at all times, and observe a 6 p.m. curfew).

B. The State Court Decision Was Not Based On an Unreasonable Determination of the Facts In Light of the Evidence Presented

Petitioner asserts that the state court's factual determination that he was not placed on mandatory supervision, but was placed on felony probation, following his guilty plea was an unreasonable determination of the facts in light of the evidence presented. (See Petition

at 5; Reply at 1, 6.) However, a review of the record shows that Petitioner's argument is without merit.

The transcript clearly indicates that Petitioner was sentenced to six years in prison, suspended, and placed on probation for three years. (LD 2 at 199, 201-215.) These terms were discussed with Petitioner and the prosecutor at length, and Petitioner accepted them. (Id.) There was no discussion of mandatory supervision. (Id.) Rather, the Court repeatedly stated and Petitioner agreed that he would be placed on probation for three years.[2] (LD 2 at 199, 201, 207, 213-214.) A separate misdemeanor DUI case also was resolved at the hearing, for which Petitioner received no additional time and agreed to attend a first-time offender alcohol class. (LD 2 at 202, 214.) Moreover, the February 11, 2014 declaration by Petitioner indicates his understanding that he would receive a six year suspended sentence, 90 days for time spent in custody, and probation for three years. (LD 1 at 103.) Later references to mandatory supervision do appear to be scrivener's errors, as they do not reflect the terms actually discussed with and agreed to by Petitioner and imposed by the court at the hearing.

Thus, the superior court's factual determination that Petitioner was on felony probation not mandatory supervision from February 2014 to April 2015 is supported by the record and certainly was not "unreasonable" under the highly deferential standard of §2254(d)(2). See Brumfield, 135 S. Ct. at 2277.

---

[2] In support of his argument that he was on mandatory supervision and not probation, Petitioner refers to the following statement by the court during the sentencing hearing: "Pursuant to your agreement, probation is denied." (LD 2 at 212; see also Petition at 5.) It appears that Petitioner misunderstands the Court's statement and has taken it out of context. In pronouncing the sentence, the Court stated that Petitioner was in fact being sentenced to six years in state prison, albeit suspended, as opposed to a sentence of just probation. (LD 2 at 212.) In making the statement that "probation is denied," the Court was not referring to the terms of the suspended prison sentence, by which Petitioner actually would be released forthwith "on terms and conditions of probation as [laid] out in the written terms." (LD 2 at 213.) Thus, Petitioner's reliance on the Court's statement that "probation is denied" is misplaced and does not support his claim.

C. Petitioner's Claim Is Not Cognizable on Federal Habeas Review and Is Without Merit

Petitioner also appears to claim that, even if the superior court in fact placed him on felony probation in February 2014, such placement was prohibited under California law, and he should have been placed on mandatory supervision for which he should have received custody credits. (Petition at 5.) He broadly characterizes his claim as a "due process" violation. (Petition at 6.)

A habeas petitioner may not "transform a state-law issue into a federal one" merely by asserting a violation of the federal constitution. Langford v. Day, 110 F.3d 1380, 1389 (9th Cir. 1997). Rather, federal habeas relief is available only for violations of the Constitution, law, or treaties of the United States and does not lie for errors of state law. 28 U.S.C. § 2254(a); Estelle v. McGuire, 502 U.S. 62, 67-68 (1991); Engle v. Isaac, 456 U.S. 107, 119 (1982). Absent fundamental unfairness, federal habeas corpus relief is not available for a state court's misapplication of its own sentencing laws. Estelle, 502 U.S. at 67. To state a cognizable claim for federal habeas corpus relief based on an alleged state sentencing error, a petitioner must show that the alleged sentencing error was "so arbitrary or capricious as to constitute an independent due process violation." Richmond v. Lewis, 506 U.S. 40, 50 (1992) (citations omitted).

Petitioner is essentially claiming the superior court violated state law by finding him statutorily ineligible for custody credits under Cal. Penal Code § 2900.5. Although he makes a general reference to "due process," this is a challenge to an interpretation of state law that is not cognizable on federal habeas review. There is no indication that the superior court's decision was fundamentally unfair or so arbitrary or capricious as to constitute an independent due process violation. Thus, the superior court's application of California law is binding on this Court, and Petitioner is not entitled to federal habeas relief. See Bradshaw v. Richey, 546 U.S. 74, 76 (2005) (per curiam) ("[A] state court's interpretation of state law . . . binds a federal court sitting in habeas corpus.")

Moreover, even if Petitioner had stated a federal habeas claim, it fails on the merits. Petitioner received custody credits for the 90 days he spent in custody as a condition of probation. (LD 2 at 201, 207.) He was not entitled to custody credits for the remaining time he spent on probation while out of custody before his probation was revoked and his previously suspended prison sentence was imposed. See, e.g., Pottorff, 47 Cal. App. 4th at 1717-20; Reinertson, 178 Cal. App. 3d at 327; In re Debra S., 135 Cal. App. 3d at 385-86. Accordingly, the superior court correctly determined that Petitioner was not entitled to additional custody credits. (LD 9 at 3.)

* * * *

The state court's denial of Petitioner's claim was neither contrary to, nor an unreasonable application of, clearly established Federal law and was not based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. Thus, Petitioner is not entitled to habeas relief.

ORDER

IT IS ORDERED: (1) that the Petition is denied; and (2) Judgment shall be entered dismissing this action with prejudice.

DATED: July 27, 2017

/s/ John E. McDermott
JOHN E. MCDERMOTT
UNITED STATES MAGISTRATE JUDGE