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

JAMES ANTHONY STEVENSON,	)	NO. ED CV 16-1041-PA(E)
	)	
Petitioner,	)	
	)	
v.	)	REPORT AND RECOMMENDATION OF
	)	
TIM BEIARTCH, Director of	)	UNITED STATES MAGISTRATE JUDGE
the Dept. of Corrections,	)	
	)	
Respondent.	)	
	)	

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This Report and Recommendation is submitted to the Honorable Percy Anderson, United States District Judge, pursuant to 28 U.S.C. section 636 and General Order 05-07 of the United States District Court for the Central District of California.

**PROCEEDINGS**

On May 16, 2016, Petitioner filed a "Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2254 By a Person in State Custody" in the United States District Court for the Southern District of California. On May 18, 2016, the United States District Court of the Southern District of California

1 transferred the Petition to this Court. Respondent filed an Answer on  
2 June 15, 2016. Petitioner filed a Reply on July 19, 2016.

3  
4 **BACKGROUND**

5  
6 In 2008, Petitioner pled nolo contendere to second degree robbery  
7 with use of a firearm (Petition, ECF Dkt. No. 1, p. 2; Respondent's  
8 Lodgment 1; Respondent's Lodgment 2, p. AG-0004). Petitioner received  
9 a fourteen-year prison sentence (Petition, ECF Dkt. No. 1, p. 1;  
10 Respondent's Lodgment 1; Respondent's Lodgment 2, p. AG-0004). The  
11 California Department of Corrections and Rehabilitation ("CDCR")  
12 determined that Petitioner was entitled to earn 15% credits as  
13 provided in California Penal Code section 2933.1 (see Petition, ECF  
14 Dkt. No. 1, p. 47).

15  
16 On November 6, 2014, Petitioner submitted a letter to the CDCR  
17 Secretary purporting to waive his alleged rights to receive credits  
18 "imposed by the courts" under California Penal Code section 2934  
19 (Petition, ECF Dkt. NO. 1, p. 6 & Exhibits, p. 36).<sup>1</sup> Petitioner  
20 apparently argues that the purported waiver should permit Petitioner  
21 to earn work-time credits pursuant to California Penal Code section  
22 2933, a more general work-time credit statute, through participation  
23 in the "Inmate Work/Training Incentive Program and positive  
24 programming periods" (Petition, ECF Dkt. No. 1, p. 6; Respondent's  
25

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26  
27 <sup>1</sup> Although Petitioner purported to waive his alleged  
28 rights under section 2934 of the CDCR Department Operations  
Manual, the Manual contains no such section. California Penal  
Code section 2934 concerns credit waivers, as discussed herein.

1 Lodgment 2, AG-005; Respondent's Lodgment 5, AG-0020). Petitioner  
2 allegedly did not receive a response to his November 2014 letter and  
3 did not receive any relief through the CDCR inmate appeals process  
4 (id.). Documents attached to the Petition show that prison officials  
5 rejected Petitioner's assertion that the alleged waiver should permit  
6 Petitioner to earn work-time credits pursuant to section 2933 (see  
7 Petition, ECF Dkt. No. 1 Exhibits, pp. 37-46).

8  
9 Petitioner filed a habeas corpus petition in the Riverside County  
10 Superior Court, which that court denied in a brief order (Respondent's  
11 Lodgments 2, 3). Petitioner filed a habeas corpus petition in the  
12 California Court of Appeal, which that court denied summarily  
13 (Respondent's Lodgments 4, 6). Petitioner filed a petition for review  
14 in the California Supreme Court, which that court denied summarily  
15 (Respondent's Lodgments 5, 7).

16  
17 **PETITIONER'S CONTENTIONS**

18  
19 Petitioner contends:

20  
21 1. CDCR's requirement that Petitioner participate in the Inmate  
22 Work/Training Incentive Program and its refusal to permit Petitioner  
23 to earn section 2933 credits for such participation allegedly violate  
24 Due Process (Ground One);

25  
26 2. CDCR allegedly is violating Petitioner's Ninth Amendment  
27 rights by denying him the ability to earn credits for participation in  
28 the Inmate Work/Training Incentive Program (Ground Two); and



1 different result. See Early v. Packer, 537 U.S. at 8 (citation  
2 omitted); Williams v. Taylor, 529 U.S. at 405-06.

3  
4 Under the “unreasonable application prong” of section 2254(d)(1),  
5 a federal court may grant habeas relief “based on the application of a  
6 governing legal principle to a set of facts different from those of  
7 the case in which the principle was announced.” Lockyer v. Andrade,  
8 538 U.S. at 76 (citation omitted); see also Woodford v. Visciotti, 537  
9 U.S. at 24-26 (state court decision “involves an unreasonable  
10 application” of clearly established federal law if it identifies the  
11 correct governing Supreme Court law but unreasonably applies the law  
12 to the facts).

13  
14 “In order for a federal court to find a state court’s application  
15 of [Supreme Court] precedent ‘unreasonable,’ the state court’s  
16 decision must have been more than incorrect or erroneous.” Wiggins v.  
17 Smith, 539 U.S. 510, 520 (2003) (citation omitted). “The state  
18 court’s application must have been ‘objectively unreasonable.’” Id.  
19 at 520-21 (citation omitted); see also Waddington v. Sarausad, 555  
20 U.S. 179, 190 (2009); Davis v. Woodford, 384 F.3d 628, 637-38 (9th  
21 Cir. 2004), cert. dismiss’d, 545 U.S. 1165 (2005). “Under § 2254(d), a  
22 habeas court must determine what arguments or theories supported,  
23 . . . or could have supported, the state court’s decision; and then it  
24 must ask whether it is possible fairminded jurists could disagree that  
25 those arguments or theories are inconsistent with the holding in a  
26 prior decision of this Court.” Harrington v. Richter, 562 U.S. 86,  
27 101 (2011). This is “the only question that matters under §  
28 2254(d)(1).” Id. at 102 (citation and internal quotations omitted).

1 Habeas relief may not issue unless "there is no possibility fairminded  
2 jurists could disagree that the state court's decision conflicts with  
3 [the United States Supreme Court's] precedents." Id. "As a condition  
4 for obtaining habeas corpus from a federal court, a state prisoner  
5 must show that the state court's ruling on the claim being presented  
6 in federal court was so lacking in justification that there was an  
7 error well understood and comprehended in existing law beyond any  
8 possibility for fairminded disagreement." Id. at 103. In applying  
9 these standards to Petitioner's exhausted claims, the Court looks to  
10 the last reasoned state court decision, here the decision of the Court  
11 of Appeal. See Delgadillo v. Woodford, 527 F.3d 919, 925 (9th Cir.  
12 2008).

13  
14 Additionally, federal habeas corpus relief may be granted "only  
15 on the ground that [Petitioner] is in custody in violation of the  
16 Constitution or laws or treaties of the United States." 28 U.S.C. §  
17 2254(a). In conducting habeas review, a court may determine the issue  
18 of whether the petition satisfies section 2254(a) prior to, or in lieu  
19 of, applying the standard of review set forth in section 2254(d).  
20 Frantz v. Hazy, 533 F.3d 724, 736-37 (9th Cir. 2008) (en banc).

## 21 22 DISCUSSION

### 23 24 I. Petitioner's Due Process Claim Does Not Merit Federal Habeas 25 Relief.

26  
27 Matters relating to sentencing and serving of a sentence  
28 generally are governed by state law and do not raise a federal

1 constitutional question. See Miller v. Vasquez, 868 F.2d 1116, 1118-  
2 19 (9th Cir. 1989), cert. denied, 499 U.S. 963 (1991); Middleton v.  
3 Cupp, 768 F.2d 1083, 1085 (9th Cir. 1985), cert. denied, 478 U.S. 1021  
4 (1986); Sturm v. California Adult Authority, 395 F.2d 446, 448 (9th  
5 Cir. 1967), cert. denied, 395 U.S. 947 (1969). Under narrow  
6 circumstances, however, the misapplication of state sentencing law may  
7 violate due process. See Richmond v. Lewis, 506 U.S. 40, 50 (1992).  
8 “[T]he federal, constitutional question is whether [the error] is so  
9 arbitrary or capricious as to constitute an independent due process”  
10 violation. Id. (internal quotation and citation omitted); see also  
11 Christian v. Rhode, 41 F.3d 461, 469 (9th Cir. 1994) (“Absent a  
12 showing of fundamental unfairness, a state court’s misapplication of  
13 its own sentencing laws does not justify federal habeas relief.”).  
14

15 No fundamental unfairness occurred here. Under California Penal  
16 Code section 2933, a nonviolent offender generally may earn work-time  
17 credit to reduce his or her sentence by fifty percent. See Cal. Penal  
18 Code §§ 2933, 2933.1. However, Petitioner’s crime of robbery  
19 qualified as a violent felony under California law. See Cal. Penal  
20 Code § 667.5(c)(9). For this reason, Petitioner is not entitled to  
21 accrue more than 15% credit. See Cal. Penal Code § 2933.1(a)  
22 (“Notwithstanding any other law, any person who is convicted of a  
23 felony offense listed in subdivision (c) of Section 667.5 shall accrue  
24 no more than 15 percent of worktime credit, as defined in Section

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1 2933");<sup>2</sup> Bankruthy v. Yates, 376 Fed. App'x 694, 695 (9th Cir. 2010)  
2 (rejecting due process challenge to state's failure to award violent  
3 offender day-for-day credits; "Cal. Penal Code §2933.1 clearly limits  
4 the sentence credits Bankruthy may earn . . . to fifteen percent.");  
5 Aung v. Beard, 2014 WL 7185336, at \*2 (C.D. Cal. Dec. 15, 2014) ("As a  
6 matter of state law, the 15% rate in § 2933.1 expressly overrides the  
7 credit accrual rule in § 2933 or any other statute.") (citation  
8 omitted).

9  
10 Petitioner's purported section 2934 waiver is unavailing. Prior  
11 to 1982, prisoners earned credits at the rate of one day of credit for  
12 every two days of good behavior or participation in work programs or  
13 other activities, pursuant to California Penal Code section 2931. See  
14 Miller v. Rowland, 999 F.2d 389, 390 (9th Cir. 1993), cert. denied,  
15 511 U.S. 1008 (1994). In 1982, the California legislature adopted a  
16 new system for awarding credits to prisoners sentenced after  
17 January 1, 1983, under which prisoners could earn one day of credit  
18 for each day of participation in work assignments or educational  
19 programs. See Cal. Penal Code § 2933; Miller v. Rowland, 999 F.2d at  
20 390. For prisoners sentenced before 1983, the legislature provided  
21 that "a prisoner subject to the provisions of Section 2931 may waive  
22 the right to receive time credits as provided in Section 2931 and be  
23 subject to the provisions of Section 2933." Cal. Penal Code § 2934.

24  
25 \_\_\_\_\_  
26 <sup>2</sup> Notwithstanding its title ("Worktime credits on  
27 sentence, etc."), section 2933, as amended in 2010, does not  
28 limit credits to those based on participation in work programs,  
but rather allows prisoners to receive credits based on time  
served. See Edwards v. Swarthout, 597 Fed. App'x 914, 915 (9th  
Cir. 2014).



1 Such waiver option is unavailable to Petitioner, however. Petitioner  
2 was sentenced long after 1983. California Penal Code section 2933.1  
3 (not section 2931 or section 2933) governs Petitioner's credit earning  
4 status. See Miller v. Rowland, 999 F.2d at 392 (waiver ineffective  
5 where petitioner was not entitled to earn section 2933 credits);  
6 Kamaleddin v. Hedgpeth, 2011 WL 5922947, at \*2 (N.D. Cal. Nov. 28,  
7 2011) ("Petitioner was convicted after January 1, 1983, and therefore  
8 not subject to the one-third rate of section 2931; he cannot obtain a  
9 waiver from 2931 since it did not apply to him.").

10  
11 To the extent Petitioner contends that prison officials are  
12 violating Petitioner's constitutional rights by compelling Petitioner  
13 to work, any such contention cannot merit federal habeas relief.  
14 "There is no federally protected right of a state prisoner not to work  
15 while imprisoned after conviction. . . ." Draper v. Rhay, 315 F.2d  
16 193, 197 (9th Cir.), cert. denied, 375 U.S. 915 (1963).

17  
18 For the foregoing reasons, the state courts' rejection of  
19 Petitioner's due process claim was not contrary to, or an objectively  
20 unreasonable application of, any clearly established Federal Law as  
21 determined by the United States Supreme Court. See 28 U.S.C. §  
22 2254(d); Harrington v. Richter, 562 U.S. at 100-03. Petitioner is not  
23 entitled to federal habeas relief on Ground One of the Petition.

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1 **II. Petitioner's Ninth Amendment Claim Does Not Merit Federal Habeas**  
2 **Relief.**

3  
4 The Ninth Amendment does not "independently [secure] any  
5 constitutional right, for purposes of pursuing a civil rights claim."  
6 Strandberg v. City of Helena, 791 F.2d 744, 748 (9th Cir. 1986)  
7 (citations omitted); see also Ramirez v. Butte-Silver Bow County, 298  
8 F.3d 1022, 1029 (9th Cir. 2002), aff'd on other grounds sub nom. Groh  
9 v. Ramirez, 540 U.S. 551 (2004) (Ninth Amendment claim properly  
10 dismissed because plaintiff may not "'double up' constitutional  
11 claims"); Schowengerdt v. United States, 944 F.2d 483, 490 (9th Cir.  
12 1991), cert. denied, 503 U.S. 951 (1992) ("Schowengerdt's Ninth  
13 Amendment argument is meritless, because that amendment has not been  
14 interpreted as independently securing any constitutional rights for  
15 purposes of making out a constitutional violation"). Accordingly,  
16 Ground Two of the Petition fails to allege any basis for federal  
17 habeas relief. See 28 U.S.C. § 2254(a); Frantz v. Hazey, 533 F.3d at  
18 736-37.

19  
20 **III. Petitioner's Equal Protection Claim Does Not Merit Federal Habeas**  
21 **Relief.**

22  
23 "The Equal Protection Clause directs that all persons similarly  
24 circumstanced shall be treated alike." Plyler v. Doe, 457 U.S. 202,  
25 216 (1982) (citation and internal quotations omitted); see also City  
26 of Cleburne v. Cleburne Living Center, 473 U.S. 432, 439 (1985). To  
27 prove an equal protection violation, Petitioner must demonstrate "that  
28 the [challenged] statute, either on its face or in the manner of its

1 enforcement, results in members of a certain group being treated  
2 differently from other persons based on membership in that group."  
3 McLean v. Crabtree, 173 F.3d 1176, 1185 (9th Cir. 1999), cert. denied,  
4 528 U.S. 1086 (2000) (citation and quotations omitted). "Second, if  
5 it is demonstrated that a cognizable class is treated differently, the  
6 court must analyze under the appropriate level of scrutiny whether the  
7 distinction made between the two groups is justified." Id. (citation  
8 and quotations omitted). Unless a legislative classification warrants  
9 some form of heightened review because it targets a suspect class or  
10 burdens the exercise of a fundamental right, the Equal Protection  
11 Clause requires only that the classification be rationally related to  
12 a legitimate state interest. See Vacco v. Quill, 521 U.S. 793, 799  
13 (1997).

14  
15 Under rational relationship review, a law is constitutional "so  
16 long as it bears a rational relation to some legitimate end." Romer  
17 v. Evans, 517 U.S. 620, 631 (1996). The Equal Protection Clause does  
18 not authorize a court to judge the "wisdom, fairness, or logic of  
19 legislative choices," or to "sit as a superlegislature to judge the  
20 wisdom or desirability of legislative policy determinations made in  
21 areas that neither affect fundamental rights nor proceed along suspect  
22 lines." Heller v. Doe, 509 U.S. 312, 319 (1993) (citations and  
23 internal quotations omitted). "For these reasons, a classification  
24 neither involving fundamental rights nor proceeding along suspect  
25 lines is accorded a strong presumption of validity." Id.

26  
27 Petitioner's articulation of his equal protection claim is  
28 extremely cursory and conclusory. Petitioner states only:

1           The Defendant [sic] obligates [Petitioner] to  
2           participate in the I.W/T.I.P. while denying me the ability  
3           to earn the credits outlined in said program; furthermore,  
4           the credit loss aspects of the program fully apply.

5  
6           (Petition, ECF Dkt. No. 1, p. 8). Petitioner thus fails to allege any  
7           facts demonstrating that he was treated differently from others  
8           similarly situated or that no rational basis existed for any allegedly  
9           differential treatment. Petitioner's cursory and conclusory  
10          allegations do not merit federal habeas relief. See Ashby v. Payne,  
11          317 Fed. App'x 641, 643 (9th Cir. 2008) (habeas petitioner's  
12          conclusory equal protection claim concerning credit denial  
13          insufficient); Greenway v. Schriro, 653 F.3d 790, 804 (9th Cir. 2011)  
14          ("cursory and vague claim cannot support habeas relief") (citation  
15          omitted); Jones v. Gomez, 66 F.3d 199, 204-205 (9th Cir. 1995), cert.  
16          denied, 517 U.S. 1143 (1996) (conclusory allegations do not warrant  
17          habeas relief).

18  
19          To the extent Petitioner challenges California Penal Code section  
20          2933.1 on the ground that the statute allegedly discriminates against  
21          prisoners who have committed violent felonies, and who therefore  
22          cannot earn credits at more than the 15% rate, any such challenge  
23          fails. The rational basis test would apply to such a challenge  
24          because: (1) prisoners do not comprise a suspect class (see Webber v.  
25          Crabtree, 158 F.3d 460, 461 (9th Cir. 1998)); and (2) no fundamental  
26          right is at stake because California Penal Code section 2933 does not  
27          create a constitutionally protected liberty interest (see Kalka v.  
28          Vasquez, 867 F.2d 546, 547 (9th Cir. 1989)). The California

1 Legislature plainly had a rational basis for treating violent  
2 offenders differently than nonviolent offenders with respect to work-  
3 time credits. See Contero v. Tilton, 248 Fed. App'x 778, 779-80 (9th  
4 Cir. 2007) (section 2933.1 served rational state interest in "treating  
5 violent offenders more harshly"); Howard v. Yates, 2008 WL 4104250, at  
6 \*5 (E.D. Cal. Sept. 2, 2008) ("The legislative intent underpinning §  
7 2933.1 warrants the C.D.C.R.'s discriminatory practice of allocating  
8 credits to inmates depending upon their respective offenses. The  
9 state has a rational basis for discriminating against different  
10 inmates under § 2933.1.") (citation omitted); People v. Rosales, 222  
11 Cal. App. 4th 1254, 1262, 166 Cal. Rptr. 3d 620 (2014) ("Violent  
12 felonies are more serious and logically warrant greater periods of  
13 incarceration.").

14  
15 In attachments to the Petition (though not in the Petition  
16 itself), Petitioner also appears to contend that he should benefit  
17 from an order of the District Court in Coleman v. Brown (United States  
18 District Court for the Eastern and Northern Districts of California  
19 case numbers 2:90-00520-KJM KLN PC and C01-1351-THE). In that order,  
20 a three-judge court discussed the State's plan to expand the use of  
21 good-time credits for state prisoners (see Petition, ECF Dkt. No. 1,  
22 pp. 116-121). The Coleman Court indicated that the State had the  
23 option of amending its good-time credit program without releasing  
24 violent offenders as long as the overall number of those released  
25 would not be affected, and the Court left it to the State to determine  
26 what modifications to make to the proposed credit expansion (id. at p.  
27 121). Petitioner has not shown that any order in Coleman entitles  
28 Petitioner to receive more work-time credits than those currently



1 **NOTICE**

2 Reports and Recommendations are not appealable to the Court of  
3 Appeals, but may be subject to the right of any party to file  
4 objections as provided in the Local Rules Governing the Duties of  
5 Magistrate Judges and review by the District Judge whose initials  
6 appear in the docket number. No notice of appeal pursuant to the  
7 Federal Rules of Appellate Procedure should be filed until entry of  
8 the judgment of the District Court.

9 If the District Judge enters judgment adverse to Petitioner, the  
10 District Judge will, at the same time, issue or deny a certificate of  
11 appealability. Within twenty (20) days of the filing of this Report  
12 and Recommendation, the parties may file written arguments regarding  
13 whether a certificate of appealability should issue.

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