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

SAMUEL PEREZ,)	NO. ED CV 17-716-AG(E)
)	
Petitioner,)	
)	
v.)	REPORT AND RECOMMENDATION OF
)	
VASQUEZ, (Warden),)	UNITED STATES MAGISTRATE JUDGE
)	
Respondent.)	
)	

This Report and Recommendation is submitted to the Honorable Andrew J. Guilford, 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 April 14, 2017, Petitioner filed a "Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody" ("the Petition"). On July 21, 2017, Respondent filed an Answer. Petitioner did not file a Reply within the allotted time. See "Order Requiring

1 Answer, etc.," filed April 19, 2017.

2
3 **BACKGROUND**
4

5 In 1998, a felony complaint filed in Superior Court charged
6 Petitioner with several crimes, including a violation of California
7 Penal Code section 597(a) (Lodgment 1 at 3).¹ Section 597(a) provides
8 that "every person who maliciously and intentionally maims, mutilates,
9 tortures, or wounds a living animal, or maliciously and intentionally
10 kills an animal, is guilty of a crime. . . ."

11
12 At Petitioner's preliminary hearing in 1999, a California Highway
13 Patrol officer testified that Petitioner fled from a traffic stop on
14 October 18, 1998 (Lodgment 20, Exhibit A at 5-8). During this flight,
15 Petitioner abandoned his vehicle and proceeded on foot (id. at 8).
16 The officer testified that, soon thereafter, the officer spoke with
17 Steven Rolfe, a person who lived in the vicinity where Petitioner had
18 abandoned his vehicle (id. at 9). The officer related hearsay
19 evidence of what Rolfe said to the officer (id.). Rolfe said he had
20 been in his backyard with his wife and his dog when Petitioner jumped
21 over the fence and into the backyard (id.). According to Rolfe, the
22 dog ran toward Petitioner, Rolfe heard a loud bang and then Rolfe saw
23 Petitioner running away with a large black gun in Petitioner's hand
24 (id.). According to Rolfe, the dog died of a gunshot wound (id.).

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28 ¹ The Court references the internal page numbers within the
lodgments rather than the ECF page numbers.

1 Later in 1999, Petitioner pled guilty to the section 597(a)
2 charge (Lodgment 1 at 16; Lodgment 20, Exhibit C). In the absence of
3 any objection, the Superior Court used the preliminary hearing
4 evidence as the factual basis for Petitioner's plea (Lodgment 20,
5 Exhibit C at 29). Petitioner received a Three Strikes sentence of 30
6 years to life (Lodgment 1 at 32).

7
8 In 2012, California voters approved Proposition 36, which amended
9 California Penal Code sections 667 and 1170.12 and added California
10 Penal Code section 1170.126. Proposition 36 thereby rendered eligible
11 for resentencing some defendants whose current Three Strikes sentences
12 had not been imposed for an offense deemed "serious and/or violent."
13 See Cal. Penal Code § 1170.126. A defendant is not eligible for
14 Proposition 36 resentencing, however, if "[d]uring the commission of
15 the current offense, the defendant used a firearm, was armed with a
16 firearm or deadly weapon, or intended to cause great bodily injury to
17 another person." Cal. Penal Code §§ 667(e)(2)(C)(iii),
18 1170.12(c)(2)(C)(iii), 1170.126(e)(2).

19
20 The California state courts ruled that Petitioner is not eligible
21 for Proposition 36 resentencing (Lodgments 11, 15, 23, 27). In 2014,
22 the California Court of Appeal ruled that Petitioner "is clearly not
23 eligible for resentencing relief based on his use of a firearm . . .
24 he shot and killed a dog with a gun" (Lodgment 11 at 2-5). In 2016,
25 the California Court of Appeal held that its 2014 ruling was res
26 judicata on the issue of Petitioner's ineligibility for Proposition 36
27 resentencing (Lodgment 23).

28 ///

1 The present Petition argues that the state courts' decisions
2 violated various precepts of California state law, including:
3 California Government Code section 68081 which supposedly prohibits
4 appellate decisions on unbriefed issues; California state procedural
5 law which supposedly requires the granting of leave to amend appellate
6 briefing; California common law policy considerations which supposedly
7 limit the proper application of res judicata; and California state
8 evidentiary law principles which supposedly exclude inadmissible
9 hearsay evidence from any Proposition 36 analysis. The Petition does
10 not expressly invoke any federal legal theory. The Petition does not
11 expressly reference any federal law authority (other than the
12 caption's pre-printed reference to 28 U.S.C. section 2254).

13 14 DISCUSSION

15
16 Federal habeas corpus relief may be granted "only on the ground
17 that [Petitioner] is in custody in violation of the Constitution or
18 laws or treaties of the United States." 28 U.S.C. § 2254(a). In
19 conducting habeas review, a court may determine the issue of whether
20 the petition satisfies section 2254(a) prior to, or in lieu of,
21 applying the standard of review set forth in section 2254(d). Frantz
22 v. Hazey, 533 F.3d 724, 736-37 (9th Cir. 2008) (en banc). For the
23 reasons discussed below, the present Petition fails to satisfy section
24 2254(a).

25
26 The Petition exclusively alleges violations of California state
27 law. Federal habeas relief is unavailable for mere violations of
28 state law. See Estelle v. McGuire, 502 U.S. 62, 67-68 (1991); see

1 also Wilson v. Corcoran, 562 U.S. 1, 5 (2010) (per curiam) (“it is
2 only noncompliance with *federal* law that renders a State’s criminal
3 judgment susceptible to collateral attack in the federal courts”)
4 (original emphasis); Hendricks v. Vasquez, 974 F.2d 1099, 1105 (9th
5 Cir. 1992) (“Federal habeas will not lie for errors of state law”);
6 cf. Langford v. Day, 110 F.3d 1380, 1389 (9th Cir. 1996), cert.
7 denied, 522 U.S. 881 (1997) (habeas petitioner may not transform a
8 state law issue into a federal law issue merely by affixing a “due
9 process” label to the state law issue).

10
11 Even if this Court were to construe Petitioner’s allegations as
12 implicitly involving federal constitutional claims, federal habeas
13 relief would be unavailable. None of Petitioner’s various claims
14 regarding the alleged violation of California state law equates to a
15 violation of federal due process. “[F]ederal habeas relief is not
16 available to redress alleged procedural errors in state post-
17 conviction proceedings.” Ortiz v. Stewart, 149 F.3d 923, 939 (9th
18 Cir. 1998), cert. denied, 526 U.S. 1123 (1999); see Franzen v.
19 Brinkman, 877 F.2d 26, 26 (9th Cir.), cert. denied, 493 U.S. 1012
20 (1989) (“a petition alleging errors in the state post-conviction
21 review process is not addressable through habeas corpus proceedings”);
22 accord Gerlaugh v. Stewart, 129 F.3d 1027, 1045 (9th Cir. 1997), cert.
23 denied, 525 U.S. 903 (1998). This rule applies to alleged procedural
24 errors in the state appeals process. See Paniagua v. Gipson, 2013 WL
25 4590740, at *23 (C.D. Cal. Aug. 28, 2013) (applying Franzen v.
26 Brinkman to a claim alleging that the California Supreme Court’s
27 denial of a petition for review was procedurally improper); Madrid v.
28 Marshall, 1995 WL 91329, *2 (N.D. Cal. Jan. 30, 1995), aff’d, 99 F.3d

1 1146 (9th Cir. 1996) (unpublished table opinion), cert. denied, 519
2 U.S. 1130 (1997) ("Petitioner alleges that the California Court of
3 Appeal erred in striking his supplemental brief contesting issues his
4 appellate counsel would not raise. Because Petitioner's assertions of
5 error in the state post-conviction review process do not represent an
6 attack on his detention, they are not addressable through habeas
7 corpus proceedings") (citing Franzen v. Brinkman). Thus, even if the
8 California state courts erred under California procedural law in any
9 of the various respects alleged by Petitioner, federal habeas relief
10 would be unavailable. See id.; see also Fong v. Arnold, 2016 WL
11 1572951, at *2 (N.D. Cal. April 14, 2016) (alleged violation of
12 California Government Code section 68081 cannot warrant federal habeas
13 relief); Krukow v. Adams, 2010 WL 4916428, at *17 (N.D. Cal. Nov. 23,
14 2010) (same); Wilson v. Parker, 2007 WL 2071786, at *8 (N.D. Miss.
15 July 18, 2007) (state court's allegedly erroneous application of res
16 judicata does not raise a federal law issue cognizable on federal
17 habeas corpus review).

18
19 Finally, the state courts' alleged reliance on hearsay evidence
20 to prove Petitioner's ineligibility for Proposition 36 resentencing
21 does not violate the federal constitution. Even during initial
22 sentencing proceedings, the federal constitution permits courts to
23 rely on hearsay evidence. See Williams v. New York, 337 U.S. 241,
24 246-52 (1949) (due process clause does not prohibit the use of hearsay
25 evidence in sentencing proceedings); United States v. Littlesun, 444
26 F.3d 1196, 1199-1200 (9th Cir.), cert. denied, 549 U.S. 885 (2006)
27 (confrontation clause does not prohibit the use of hearsay evidence in
28 sentencing proceedings); see also United States v. Chee, 110 F.3d

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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