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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

KHINE MYE (BRIAN) AUNG,	)	CASE NO. SACV 14-909-AJW
	)	
Petitioner,	)	MEMORANDUM AND ORDER
	)	DENYING PETITION FOR A
v.	)	WRIT OF HABEAS CORPUS
	)	
JEFFREY BEARD,	)	
	)	
Respondent.	)	
	)	

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On January 15, 2010, petitioner pleaded guilty to one count of first degree robbery in concert (Cal. Penal Code §§ 211, 212.5(a), 213(a)(1)) and admitted the allegation that he personally used a firearm in the commission of the offense (Cal. Penal Code § 12022.53(b)). [Lodged Document ("LD") 1]. He was sentenced to state prison for a term of 13 years. [LD 3].

On June 17, 2014, petitioner filed this petition for a writ of habeas corpus. Petitioner alleges that he is entitled to earn six months of credit against his sentence for each six months he served in custody ("50% credit") under California Penal Code § 2933. According to petitioner, the California Department of Corrections and Rehabilitation ("CDCR") erroneously applied California Penal Code § 2933.1 to him,

1 thereby limiting his eligibility to earn credit to a rate of no more  
2 than 15% of the time served. Petitioner argues that the misapplication  
3 of § 2933.1 to him has deprived him of due process. [Petition at 5B].  
4 Respondent filed an answer to the petition, and petitioner filed a  
5 reply.<sup>1</sup>

6 A federal court may not grant a writ of habeas corpus on behalf of  
7 a person in state custody

8 with respect to any claim that was adjudicated on the merits  
9 in state court proceedings unless the adjudication of the  
10 claim (1) resulted in a decision that was contrary to, or  
11 involved an unreasonable application of, clearly established  
12 Federal law, as determined by the Supreme Court of the United  
13 States; or (2) resulted in a decision that was based on an  
14 unreasonable determination of the facts in light of the  
15 evidence presented in the state court proceeding.

16 28 U.S.C. § 2254(d). "Clearly established federal law" for purposes of  
17 § 2254(d)(1) includes only "the holdings, as opposed to the dicta, of  
18 th[e Supreme] Court's decisions." Howes v. Fields, 565 U.S. \_\_\_\_, 132  
19 S.Ct. 1181, 1187 (2012) (internal quotation marks and citation omitted).

20 Petitioner's claim was rejected by the California Superior Court,  
21 which explained:

22 Conduct credit is a privilege and not a right. (Pen. Code, §  
23 2933(c).) Prisoners generally do not have a constitutional  
24 right to good conduct credits. (*In re Johnson* (2009) 176

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26 <sup>1</sup> Respondent argues that the petition is untimely. [Answer at 2-  
27 5]. Because petitioner is not entitled to relief on the merits of his  
28 claim, the Court need not decide the procedural issue. See Lambrix v.  
Singletary, 520 U.S. 518, 525 (1997)(explaining that a district court  
may address merits without reaching procedural issues when doing so  
best serves the interest of judicial economy).

1 Cal.App.4th 290, 297; *In re Bothwell* (2008) 164 Cal.App.4th  
2 160, 165.) Petitioner stands convicted of robbery which is  
3 classified as a violent felony. (Pen. Code § 667.5(c)(9).) A  
4 defendant convicted of a violent felony shall accrue no more  
5 than 15% conduct credit. (Pen. Code, § 2933.1(a).) Section  
6 2933.1's purpose is to protect the public from dangerous  
7 repeat offenders who otherwise would be released from prison.  
8 (*People v. Marichalar* (2003) 144 Cal.App.4th 1331, 1337.) No  
9 violation of petitioner's constitutional right to due process  
10 is established.

11 [LD at 2].<sup>2</sup>

12 Petitioner's claim fails for several reasons. To begin with,  
13 federal habeas corpus relief is not available for alleged errors in the  
14 interpretation or application of state law. Rather, the Court is  
15 limited to deciding whether the petitioner has been convicted or  
16 sentenced in violation of the Constitution, laws, or treaties of the  
17 United States. *Swarthout v. Cooke*, 131 S.Ct. 859, 861 (2011); *Estelle*  
18 *v. McGuire*, 502 U.S. 62, 67-68 (1991). Thus, to the extent that  
19 petitioner's claim merely challenges the proper interpretation of state  
20 law, he is not entitled to relief.

21 Petitioner contends that he was denied due process because he was  
22 deprived of his right to earn 50% credit without being provided a  
23 hearing and without proof that he violated prison rules. [Petition at  
24 5B; Reply at 3-4]. In support of his claim, petitioner cites *Wolff v.*

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26 <sup>2</sup> Both the California Court of Appeal and California Supreme  
27 Court summarily denied petitioner's claim. [LDs 7, 9]. Accordingly,  
28 the Court "looks through" the higher courts' summary denials to the  
last reasoned decision by a state court. *See Cannedy v. Adams*, 706  
F.3d 1148, 1158-1159 (9th Cir. 2013) (citing *Ylst v. Nunnemaker*, 501  
U.S. 797, 803 (1991)), *cert. denied*, 134 S.Ct. 1001 (2014).

1 McDonnell, 418 U.S. 539 (1974). Wolff involved prison disciplinary  
2 proceedings in which a prisoner lost good time credits that he had  
3 previously accrued and earned. In that situation, the Supreme Court held  
4 that prisoners are entitled to minimal due process protections (i.e.,  
5 notice of the disciplinary charges, an opportunity to present evidence,  
6 and a statement of reasons) to protect their interest in  
7 previously-earned credits. Wolff, 418 U.S. at 463-464. No Supreme Court  
8 authority has extended Wolff's due process protections to a prisoner's  
9 interest in unearned, potential future credits or in accruing credits at  
10 a specific rate. Given the absence of Supreme Court authority,  
11 petitioner cannot demonstrate that the state court's rejection of his  
12 claim amounted to an unreasonable application of clearly established  
13 federal law. See Knowles v. Mirzayance, 556 U.S. 111, 122 (2009)  
14 ("[T]his Court has held on numerous occasions that it is not an  
15 unreasonable application of clearly established Federal law for a state  
16 court to decline to apply a specific legal rule that has not been  
17 squarely established by this Court.") (internal quotation marks  
18 omitted)); Carey v. Musladin, 549 U.S. 70, 77 (2006) ("Given the lack of  
19 holdings from this Court ... it cannot be said that the state court  
20 unreasonably applied clearly established Federal law.") (internal  
21 quotation marks and alterations omitted)); see also Franklin v. Knowles,  
22 428 Fed.App'x 777, 778 (9th Cir. 2011) (concluding that the state  
23 court's denial of a due process challenge to California's credit accrual  
24 statute "was neither contrary to, nor an unreasonable application of,  
25 clearly established federal law [because] California prisoners do not  
26 have a protected liberty interest in earning work time credits.");  
27 Poutre v. Lea, 2011 WL 7708735, at \*6 (C.D.Cal. 2011) (stating that the  
28 prisoner "possessed no liberty interest in receiving conduct credits"

1 and that the state's "purported denial of petitioner's 'right' to  
2 serve less than eighty percent of his sentence through an accrual of  
3 conduct credits cannot be construed as a deprivation of due process");  
4 Cochran v. Diaz, 2013 WL 3991991, at \*2 (E.D.Cal. 2013) ("Although  
5 inmates have a liberty interest in good time credit they have already  
6 earned, see [Wolff], no such interest has been recognized in the  
7 opportunity to earn good time credit.").

8 To the extent that petitioner might be contending that he was  
9 deprived of due process because the application of state law was  
10 arbitrary and capricious, his claim also fails. Section 2933.1(a) of  
11 the California Penal Code provides that, "[n]otwithstanding any other  
12 law, any person who is convicted of a felony offense listed in  
13 subdivision (c) of Section 667.5 shall accrue no more than 15 percent  
14 of worktime credit, as defined in Section 2933." Section 667.5(c)  
15 lists the offenses that the legislature has determined constitute  
16 "violent felonies," including petitioner's robbery offense and use of  
17 a firearm enhancement. As a matter of state law, the 15% rate in §  
18 2933.1 expressly overrides the credit accrual rule in § 2933 or any  
19 other statute. See, e.g., In re Martinez, 30 Cal.4th 29, 34-35 (2003)  
20 (explaining the operation of the sentencing and credit statutes). In  
21 light of the relevant California statutes, petitioner cannot show that  
22 the state court's determination that he was not entitled to earn 50%  
23 credits was erroneous under state law,<sup>3</sup> let alone arbitrary or

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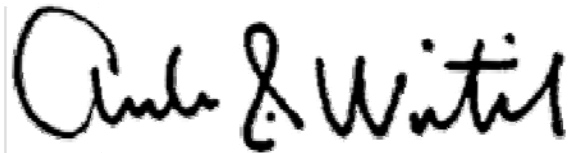
24  
25 <sup>3</sup> Petitioner apparently believes that § 2933.1 of the California  
26 Penal Code is limited to recidivists [Reply at 2-3], but nothing in  
27 the statute or the case law applying it supports such a reading. His  
28 argument is based upon the California Superior Court's recitation of  
the legislature purpose of § 2933.1 - namely, that it was intended to  
"protect the public from dangerous repeat offenders." [LD 5 at 2]. The  
Superior Court's statement, however, is better read as summarizing the

1 capricious. See Franklin, 428 Fed.Appx. at 778 ("To the extent  
2 Franklin's claims concern other credits which do implicate a protected  
3 liberty interest, the state court's interpretation of California law  
4 was not 'so unexpected as to violate due process.'" ) (quoting Gollehon  
5 v. Mahoney, 626 F.3d 1019, 1023 n. 5 (9th Cir. 2010), cert. denied,  
6 132 S.Ct. 196 (2011)); see generally Hubbart v. Knapp, 379 F.3d 773,  
7 779 (9th Cir. 2004) (federal habeas corpus relief for errors in the  
8 application of state law is available only if the state court's  
9 misapplication of state law was arbitrary and capricious, and thus  
10 violated federal due process).

11 For the foregoing reasons, the petition for a writ of habeas  
12 corpus is denied.

13 **It is so ordered.**

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15 Date: December 15, 2014



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18 Andrew J. Wistrich  
United States Magistrate Judge

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22 overarching legislative intent behind the large set of provisions  
23 limiting the availability of credits to different groups of prisoners  
24 - including violent felons, murderers, and repeat offenders, among  
25 others. See Cal.Penal Code §§ 2933.1, 2933.2, 2933.5; In re Martinez,  
26 30 Cal. 4th 34-35 & n. 5 (setting out the different limitations on  
27 earning credits under California law, including, "[a] nonviolent  
28 offender may receive a credit up to 50 percent of her actual  
presentence confinement"; a nonviolent offender with no strikes "may  
earn 100 percent credit postsentence (one day of conduct credit for  
each day actually served)"; "a recidivist with a prior strike may earn  
postsentence credits only up to 20 percent of the total prison  
sentence"; "an offender with two prior strikes is denied any  
postsentence conduct credit"; "[v]iolent felons receive ... 15 percent  
credit"; and "convicted murderers receive no credit at all").  
Petitioner's attempt to convert the Superior Court's statement into an  
interpretation of the statute is unpersuasive.