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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RUBEN F. CONTRERAS,)	1:08-CV-01832 JMD HC
)	
Petitioner,)	ORDER DENYING PETITION FOR WRIT
)	OF HABEAS CORPUS
v.)	
)	ORDER DIRECTING CLERK OF COURT
J.A. YATES,)	TO ENTER JUDGEMENT
)	
Respondent.)	ORDER DECLINING TO ISSUE
)	CERTIFICATE OF APPEALABILITY

Petitioner Ruben F. Contreras (“Petitioner”) is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

PROCEDURAL HISTORY

Petitioner is currently in the custody of the California Department of Corrections and Rehabilitation at Pleasant Valley State Prison, pursuant to a judgement of the Fresno County Superior Court. (Pet. at 2). Petitioner pled guilty in May 2007, of driving under the influence (Cal. Penal Code § 23152(b)) and evading arrest (Cal. Penal Code § 2800.2(a)) with sentence enhancements for having prior prison terms and strikes. Petitioner was sentenced to a total prison term of fourteen years. (Pet. at 2; Answer at 1).

Petitioner did not pursue a direct appeal of his conviction. (Pet. at 3; Answer at 2). Rather, Petitioner filed a petition for wit of habeas corpus with the California Supreme Court on June 4, 2008. (Lod. Doc. 1). The petition was summarily denied on November 12, 2008. (Pet. Ex. 1).

1 On December 1, 2008, Petitioner filed the instant federal petition for writ of habeas corpus.
2 On March 17, 2009, Respondent filed a response to the petition.¹ Petitioner filed a reply to
3 Respondent's answer on March 27, 2009.

4 Consent to Magistrate Judge Jurisdiction

5 On December 22, 2008, Petitioner consented, pursuant to Title 18 U.S.C. section 636(c)(1),
6 to have a magistrate judge conduct all further proceedings, including the entry of final judgment.
7 (Court Doc. 3). Respondent consented to the jurisdiction of a magistrate judge on February 19,
8 2009. (Court Doc. 8). On October 28, 2009, the case was reassigned to the undersigned for all
9 further proceedings. (Court Doc. 14).

10 **DISCUSSION**

11 **I. Jurisdiction and Venue**

12 A person in custody pursuant to the judgment of a state court may petition a district court for
13 relief by way of a writ of habeas corpus if the custody is in violation of the Constitution, laws, or
14 treaties of the United States. 28 U.S.C. § 2254(a); 28 U.S.C. § 2241(c)(3); *Williams v. Taylor*, 529
15 U.S. 362, 375 n.7 (2000). Petitioner asserts that he suffered violations of his rights as guaranteed by
16 the U.S. Constitution. As Petitioner is currently incarcerated in Pleasant Valley State Prison²
17 Petitioner's custody arose from a conviction in the Fresno County Superior Court, the Court has
18 jurisdiction over and is the proper venue for Petitioner's application for writ of habeas corpus. *See*
19 28 U.S.C. § 2241(d) (vesting concurrent jurisdiction for an application for writ of habeas corpus to
20 the district court where the petitioner "is in custody or in the district court for the district within
21 which the State court was held which convicted and sentenced him" if the State "contains two or
22 more Federal judicial districts"); *see also* 28 U.S.C. § 84(b) (stating that the Eastern District of
23 California is composed of several counties, including Fresno County).

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27 ¹Respondent admits that Petitioner has exhausted his state remedies and does not allege that the petition is untimely.
(*See Answer at 2*).

28 ²Pleasant Valley State Prison is located in Coalinga, California, which is in Fresno County.

1 **II. ADEPA Standard of Review**

2 On April 24, 1996, Congress enacted the Anti-terrorism and Effective Death Penalty Act of
3 1996 (“AEDPA”), which applies to all petitions for a writ of habeas corpus filed after the statute’s
4 enactment. *Lindh v. Murphy*, 521 U.S. 320, 326-327 (1997); *Jeffries v. Wood*, 114 F.3d 1484, 1499
5 (9th Cir. 1997), *cert. denied*, 522 U.S. 1008, 118 S.Ct. 586 (1997) (quoting *Drinkard v. Johnson*, 97
6 F.3d 751, 769 (5th Cir. 1996), *cert. denied*, 520 U.S. 1107 (1997), *overruled on other grounds by*
7 *Lindh*, 521 U.S. 320 (holding AEDPA only applicable to cases filed after statute’s enactment)). The
8 instant petition was filed in 2008 and is consequently governed by the provisions of the AEDPA,
9 which became effective April 24, 1996. *Lockyer v. Andrade*, 538 U.S. 63, 70 (2003).

10 As Petitioner is in custody of the California Department of Corrections and Rehabilitation
11 pursuant to a state court judgment, 28 U.S.C. § 2254 remains the exclusive vehicle for Petitioner’s
12 habeas petition. *Sass v. California Board of Prison Terms*, 461 F.3d 1123, 1126-1127 (9th Cir.
13 2006) (quoting *White v. Lambert*, 370 F.3d 1002, 1006 (9th Cir. 2004) in holding that, “[s]ection
14 2254 ‘is the exclusive vehicle for a habeas petition by a state prisoner in custody pursuant to a state
15 court judgment, even when the petitioner is not challenging his underlying state court conviction”).

16 Since Petitioner filed his petition after the effective date of AEDPA, his petition for habeas
17 corpus “may be granted only if he demonstrates that the state court decision denying relief was
18 ‘contrary to, or involved an unreasonable application of, clearly established Federal law, as
19 determined by the Supreme Court of the United States.’” *Irons v. Carey*, 505 F.3d 846, 850 (9th Cir.
20 2007) (quoting 28 U.S.C. § 2254(d)(1)); *see Lockyer*, 538 U.S. at 70-71.

21 As a threshold matter, this Court must “first decide what constitutes ‘clearly established
22 Federal law, as determined by the Supreme Court of the United States.’” *Lockyer*, 538 U.S. at 71
23 (quoting 28 U.S.C. § 2254(d)(1)). In ascertaining what is “clearly established Federal law,” this
24 Court must look to the “holdings, as opposed to the dicta, of [the Supreme Court's] decisions as of
25 the time of the relevant state-court decision.” *Id.* (quoting *Williams*, 592 U.S. at 412). “In other
26 words, ‘clearly established Federal law’ under § 2254(d)(1) is the governing legal principle or
27 principles set forth by the Supreme Court at the time the state court renders its decision.” *Id.*

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1 Finally, this Court must consider whether the state court’s decision was “contrary to, or
2 involved an unreasonable application of, clearly established Federal law.” *Lockyer*, 538 U.S. at 72,
3 (quoting 28 U.S.C. § 2254(d)(1)). “Under the ‘contrary to’ clause, a federal habeas court may grant
4 the writ if the state court arrives at a conclusion opposite to that reached by [the Supreme] Court on a
5 question of law or if the state court decides a case differently than [the] Court has on a set of
6 materially indistinguishable facts.” *Williams*, 529 U.S. at 413; *see also Lockyer*, 538 U.S. at 72.
7 “Under the ‘unreasonable application clause,’ a federal habeas court may grant the writ if the state
8 court identifies the correct governing legal principle from [the] Court’s decisions but unreasonably
9 applies that principle to the facts of the prisoner’s case.” *Williams*, 529 U.S. at 413. “[A] federal
10 court may not issue the writ simply because the court concludes in its independent judgment that the
11 relevant state court decision applied clearly established federal law erroneously or incorrectly.
12 Rather, that application must also be unreasonable.” *Id.* at 411. A federal habeas court making the
13 “unreasonable application” inquiry should ask whether the State court’s application of clearly
14 established federal law was “objectively unreasonable.” *Id.* at 409.

15 Petitioner bears the burden of establishing that the state court’s decision is contrary to or
16 involved an unreasonable application of United States Supreme Court precedent. *Baylor v. Estelle*,
17 94 F.3d 1321, 1325 (9th Cir. 1996). Although only Supreme Court law is binding on the states, Ninth
18 Circuit precedent remains relevant persuasive authority in determining whether a state court decision
19 is objectively unreasonable. *See Clark v. Murphy*, 331 F.3d 1062, 1069 (9th Cir. 2003); *Duhaime v.*
20 *Ducharme*, 200 F.3d 597, 600-01 (9th Cir. 1999). Furthermore, AEDPA requires that we give
21 considerable deference to state court decisions. The state court’s factual findings are presumed
22 correct. 28 U.S.C. § 2254(e)(1). We are bound by a state’s interpretation of its own laws. *Souch v.*
23 *Schaivo*, 289 F.3d 616, 621 (9th Cir. 2002).

24 The initial step in applying AEDPA’s standards requires a federal habeas court to “identify
25 the state court decision that is appropriate for our review.” *Barker v. Fleming*, 423 F.3d 1085, 1091
26 (9th Cir. 2005). Here, the only state court to have adjudicated Petitioner’s claims was the California
27 Supreme Court. (Lod. Doc. 2). Thus, the Court looks to see if that decision was contrary to or an
28 unreasonable application of clearly established federal law. *Ylst v. Nunnemaker*, 501 U.S. 797, 803

1 (1991) (finding that federal habeas court looks through ambiguous or unexplained decisions to the
2 last reasoned decision by a state court); *Bailey v. Rae*, 339 F.3d 1107, 1112-1113 (9th Cir. 2003)
3 (noting that a federal habeas court looks to the last reasoned State court decision in order to
4 determine whether that decision was contrary to or an unreasonable application of clearly established
5 federal law). Furthermore, the Court notes that the California Supreme Court summarily denied
6 Petitioner’s claims. As a result of the unexplained rejection, this Court conducts an independent
7 review of the record to decide whether the state court’s decision was objectively reasonable. *Himes*
8 *v. Thompson*, 336 F.3d 848, 853 (9th Cir. 2003).

9 **III. Review of Petitioner’s Claim**

10 The instant petition for writ of habeas corpus contains two grounds for relief. First,
11 Petitioner contends that trial counsel was ineffective by failing to object to the imposition of a
12 consecutive sentence enhancement. Second, Petitioner contends that his right to due process of the
13 law was violated by the trial court’s failure to adhere to the plea agreement entered into by Petitioner
14 and the state.

15 ***A. Ground One: Ineffective Assistance of Counsel***

16 Petitioner contends that his rights under the Sixth Amendment were violated by trial
17 counsel’s defective performance—specifically, Petitioner argues that counsel’s failure to object at
18 sentencing was deficient. Petitioner contends that counsel had advised Petitioner that if he entered a
19 plea of guilty, the maximum sentence Petitioner could have received was nine years and four months
20 with any sentence enhancements running concurrently to that sentence.³ At the sentencing hearing,
21 Petitioner did in fact receive a total sentence of nine years and four months for pleading guilty to
22 count one and count three. (RT, Vol. VI, at 260). However, the trial court also imposed a
23 consecutive five year and eight month terms for a stayed sentence stemming from Petitioner’s
24 conviction in 2005. (RT, Vol. VI, at 260-261). Petitioner argues that counsel should have objected

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26 ³The Court notes that Petitioner does not contend that counsel should have advised Petitioner that his previous eight
27 year sentence would have been reimposed by his guilty plea. Such a claim would be unpersuasive as the trial court advised
28 Petitioner of such a consequence. (RT, Vol. V, at 201-202). The trial court also stated that it would impose the maximum
possible sentence under the law, which could end up being eleven, thirteen, or fourteen years. Therefore, Petitioner cannot
claim that he was prejudiced by counsel’s failure to advise him as the trial court had advised him of the possible
consequences.

1 to the imposition of the five year and eight month additional sentence Petitioner received. (Pet. at
2 3a-3b).

3 Generally, ineffective assistance of counsel claims are analyzed under the “unreasonable
4 application” prong of 28 U.S.C. § 2254(d). *Weighall v. Middle*, 215 F.3d 1058, 1061-1062 (9th Cir.
5 2000). For the purposes of habeas cases governed by 28 U.S.C. § 2254(d), the law governing
6 ineffective assistance of counsel claims is clearly established. *Canales v. Roe*, 151 F.3d 1226, 1229
7 (9th Cir. 1998). An allegation of ineffective assistance of counsel requires that a petitioner establish
8 two elements—(1) counsel’s performance was deficient and (2) petitioner was prejudiced by the
9 deficiency. *Strickland v. Washington*, 466 U.S. 668, 687(1984); *Lowry v. Lewis*, 21 F.3d 344, 346
10 (9th Cir. 1994). Under the first element, Petitioner must establish that counsel’s representation fell
11 below an objective standard of reasonableness, specifically identifying alleged acts or omissions
12 which did not fall within reasonable professional judgment considering the circumstances.
13 *Strickland*, 466 U.S. at 688; *United States v. Quintero-Barraza*, 78 F.3d 1344, 1348 (9th Cir. 1995).
14 Judicial scrutiny of counsel’s performance is highly deferential and there exists a strong presumption
15 that counsel’s conduct fell within the wide range of reasonable professional assistance. *Strickland*,
16 466 U.S. at 687; *Sanders v. Ratelle*, 21 F.3d 1446, 1456 (9th Cir. 1994).

17 Secondly, Petitioner must show that counsel’s errors were so egregious that Petitioner was
18 deprived of the right to a fair trial, namely a trial whose result is reliable. *Strickland*, 466 U.S. at
19 687. To prevail on the second element, Petitioner bears the burden of establishing that there exists
20 “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding
21 would have been different. A reasonable probability is a probability sufficient to undermine
22 confidence in the outcome.” *Quintero-Barraza*, 78 F.3d at 1348 (quoting *Strickland*, 466 U.S. at
23 694). A court need not determine whether counsel’s performance was deficient before examining
24 the prejudice suffered by the Petitioner as a result of the alleged deficiencies. *Strickland*, 466 U.S. at
25 697. Since prejudice is a prerequisite to a successful claim of ineffective assistance of counsel, a
26 finding that the claimed deficiency was not sufficiently prejudicial to Petitioner’s case is fatal to an
27 ineffective assistance of counsel claim. *Id.*

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1 Here, Petitioner’s claim is unavailing as Petitioner cannot prove that counsel’s performance
2 was prejudicial. Petitioner claims he suffered prejudice since the reason he pled guilty was the
3 “specific benefits advised and explained to him by defense attorney—a sentence imposition of no
4 more than nine years four months where any other possibly additional term will be imposed to run
5 concurrently with the instant case.” (Pet. at 3d). However, such an argument is disingenuous as the
6 trial court had previously advised Petitioner prior to his change in plea that the previously stayed
7 sentence could be added consecutively to his primary sentence. (RT, Vol. V, at 201-202).
8 Additionally, the trial judge in the 2004 case had repeatedly warned Petitioner that any further
9 infraction related to driving, much less driving under the influence, would result in the
10 reimposition of his eight year stayed term. (RT, Vol. IV, at 168). The trial judge in 2004 even
11 warned Petitioner that he would have to serve a minimum of eighty-five percent of that eight year
12 term if he committed another offense. Furthermore, Petitioner fails to demonstrate that an objection
13 by counsel would have resulted in the trial court’s decision to impose the previously stayed term
14 concurrently. Such a showing would have been difficult considering the trial court’s express intent
15 to sentence Petitioner to the maximum sentence under the law. (RT, Vol. V, at 202). Petitioner has
16 not proven that an objection would have swayed that judge into imposing a concurrent sentence.

17 ***B. Ground Two: Violation of Due Process Stemming From Plea Agreement***

18 Petitioner’s next claims that the trial court violated his right to due process of the law by
19 failing to enforce the plea agreement and sentencing him to a total term beyond the nine years and
20 four months

21 A criminal defendant's right to due process of the law entitles him/her to enforcement of the
22 terms of a plea agreement. *Santobello v. New York.*, 404 U.S. 257, 261-262 (1971); *Ricketts v.*
23 *Adamson*, 483 U.S. 1, 20-21 (1987) (stating that “[t]he determination of [defendant’s] rights and
24 responsibilities under the plea agreement is controlled by the principles of fundamental fairness
25 imposed by the Due Process Clause”); *United States v. Allen*, 434 F.3d 1166, 1174 (9th Cir.2006)
26 (quoting *United States v. Mondragon*, 228 F.3d 978, 981 (9th Cir.2000) and citing *INS v. St. Cyr*,
27 533 U.S. 289, 321-322 (2001), for the proposition that “[b]ecause the defendant in a plea agreement
28 relinquishes his constitutional right to a trial [citation] ‘the integrity of our judicial system requires

1 that the government strictly comply with its obligations under a plea agreement”). Additionally,
2 “when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it
3 can be said to be a part of the inducement or consideration, such promise must be fulfilled.”
4 *Santobello*, 404 U.S. at 262; *see also United States v. Hallam*, 472 F.2d 168, 169 (9th Cir. 1973).
5 Where a promise on which a plea rests is violated, the remedy is either specific performance of the
6 plea agreement or the opportunity to withdraw the plea. *Santobello*, 404 U.S. at 262-263. The
7 *Santobello* court further found that the choice of appropriate remedy should be left to the discretion
8 of the state court as a state court is in a better position to determine if the circumstances of the case
9 require specific performance or allowing the defendant to withdraw his plea.

10 Furthermore, it is clearly established federal law that the construction and interpretation of
11 state court plea agreements, and their resulting contractual obligations, are generally matters of state
12 law. *Buckley v. Terhune*, 441 F.3d 688, 694-695 (9th Cir. 2006)(citing *Ricketts*, 483 U.S. at 6 n. 3).
13 “Plea agreements are contractual in nature and are measured by contract law standards.” *Brown v.*
14 *Poole*, 337 F.3d 1155, 1159 (9th Cir. 2003)(quoting *United States v. De La Fuente*, 8 F.3d 1333,
15 1337 (9th Cir. 1993)). In California, a court must first look to the plain meaning of the agreement's
16 language. *Buckley*, 441 F.3d at 695 (citing Cal. Civ. Code §§ 1638, 1644). Where the language is
17 ambiguous, the terms “must be interpreted in the sense in which the promisor believed, at the time of
18 making it, that the promisee understood it.” Cal. Civ. Code § 1649. “The inquiry considers not the
19 subjective belief of the promisor but, rather, the ‘objectively reasonable’ expectation of the
20 promisee.” *Buckley*, 441 F.3d at 695 (quoting *Bank of the West v. Superior Court*, 2 Cal.4th 1254,
21 1265 (Cal. 1992)).

22 Here, Petitioner’s claim is refuted by the record of the hearing in which Petitioner changed
23 his pleas. The following exchange between Petitioner, trial counsel, and the trial court occurred at
24 that time:

25 [COUNSEL]: Yes. Count 1 is the felony DUI. Count 3 is the felony evading arrest.
26 And he’s also going to be admitting the two prison priors alleged, and he’s also
27 admitting to serious prior felonies, which are commonly referred to as strikes, the
28 court has indicated, which, of course, means it’s a conditional plea. If the court
changes his mind later he can withdraw his plea. The exposure on this case is nine
years, four months, if everything was aggravated, to run consecutive. *We do have an*
eight-year stayed term. There may be some question how that can run, according to

1 *this, but I have advised him that it could add consecutive and could add up to three or*
2 *four years, potentially, but you have a slightly different view of that.*

3 THE COURT: [Petitioner], I'll tell you this: That if I do strike your strike according
4 to this plea agreement, in all likelihood, I'm going to give you the maximum sentence
5 that I can by law once that strike is stricken, *so I want to make sure that you fully*
6 *understand that. And whether that ends up beign 11 years or 13 years or 14 years, I*
7 *just want to make sure you understand that that's what you're entering into. It adds*
8 *four years. Do you understand?*

9 [PETITIONER]: Yes, Your Honor.

10 (RT, Vol. V, 201-202).

11 As evidenced by the record, Petitioner's claim that he understood his plea agreement to carry a
12 maximum term of nine years and four months is false. Both the trial court and counsel advised
13 Petitioner that even with the plea agreement his maximum sentence would exceed the nine years and
14 four months because of the prior stayed sentence. Consequently, Petitioner's claim must be denied
15 on the merits.

16 **IV. Certificate of Appealability**

17 A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a
18 district court's denial of his petition, and an appeal is only allowed in certain circumstances. *Miller-*
19 *El v. Cockrell*, 123 S.Ct. 1029, 1039 (2003). The controlling statute in determining whether to issue
20 a certificate of appealability is 28 U.S.C. § 2253, which provides that a circuit judge or judge may
21 issue a certificate of appealability where "the applicant has made a substantial showing of the denial
22 of a constitutional right." Where the court denies a habeas petition, the court may only issue a
23 certificate of appealability "if jurists of reason could disagree with the district court's resolution of
24 his constitutional claims or that jurists could conclude the issues presented are adequate to deserve
25 encouragement to proceed further." *Miller-El*, 123 S.Ct. at 1034; *Slack v. McDaniel*, 529 U.S. 473,
26 484 (2000). While the petitioner is not required to prove the merits of his case, he must demonstrate
27 "something more than the absence of frivolity or the existence of mere good faith on his . . . part."
28 *Miller-El*, 123 S.Ct. at 1040.

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1 In the present case, the Court finds that reasonable jurists would not find the Court's
2 determination that Petitioner is not entitled to federal habeas corpus relief debatable, wrong, or
3 deserving of encouragement to proceed further. Petitioner has not made the required substantial
4 showing of the denial of a constitutional right. Accordingly, the Court hereby DECLINES to issue a
5 certificate of appealability.

6 **ORDER**

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. The Petition for Writ of Habeas Corpus is DENIED with prejudice;
9 2. The Clerk of Court is DIRECTED to enter judgment; and
10 3. The Court DECLINES to issue a certificate of appealability.

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12 IT IS SO ORDERED.

13 **Dated:** November 17, 2009 /s/ John M. Dixon
14 UNITED STATES MAGISTRATE JUDGE

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