



1 mistaken. Petitioner states in his petition he entered a plea bargain and was sentenced to a term of 15  
2 years to life. Given the maximum of the term is “to life,” it cannot be argued that the California  
3 Department of Corrections is holding him beyond the terms of his sentence. Thus, any challenge to  
4 the execution of the sentence is clearly meritless. On the other hand, if Petitioner is alleging he  
5 entered a plea agreement with the understanding that the term would be other than “15 years to life,”  
6 then he is claiming his plea was not knowingly, voluntarily, or intelligently made. Such a claim  
7 attacks the sentence itself and must be made in the court of conviction.

8 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a *de*  
9 *novo* review of the case. Having carefully reviewed the entire file and having considered the  
10 objections, the Court concludes that the Magistrate Judge's Findings and Recommendation is  
11 supported by the record and proper analysis, and there is no need to modify the Findings and  
12 Recommendations based on the points raised in the objections.

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. The Findings and Recommendation issued January 22, 2009, is ADOPTED IN FULL;
- 15 2. Ground Two is DISMISSED from the petition;
- 16 3. The matter is REFERRED back to the Magistrate Judge for further proceedings; and
- 17 4. As this is not a “final order” which disposes of all claims in the petition, a certificate of  
18 appealability is not required. 28 U.S.C. § 1291; Catlin v. United States, 324 U.S. 229, 233 (1945).

19 IT IS SO ORDERED.

20 **Dated: February 18, 2009**

**/s/ Oliver W. Wanger**  
UNITED STATES DISTRICT JUDGE

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