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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ALBERT ANDREW LUCERO,
Petitioner,
v.
KIM HOLLAND, Warden,
Respondent.

No. 1:10-cv-01714-AWI-SKO (HC)

ORDER

Petitioner, Albert Andrew Lucero, is a state prisoner proceeding through counsel with an application for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner filed his petition for writ of habeas corpus on September 10, 2010, alleging five grounds for habeas relief: (1) improper admission of evidence; (2) violation of Petitioner’s right to confrontation; (3) insufficient evidence; (4) violation of Petitioner’s Due Process Rights; and (5) state law errors.

On December 11, 2014, the Magistrate Judge filed findings and recommendations in which she recommended that the Court dismiss Petitioner’s state law claims, deny the petition, enter judgment for Respondent, and decline to issue a certificate of appealability. On March 23, 2015, Petitioner filed objections to the findings and recommendations. After reviewing the record *de novo* and considering Petitioner’s objections, the Court declined to modify the findings and

1 recommendations and adopted them in full on May 15, 2015.

2 On August 31, 2018, the United States Court of Appeals for the Ninth Circuit affirmed in
3 part, reversed in part, and remanded the petition with instructions for this Court to grant Petitioner's
4 petition for writ of habeas corpus on his claim that his conviction for possession of a shank while
5 in custody (Cal. Penal Code §4502(a)) violated *Jackson v. Virginia*, 443 U.S. 307 (1979).
6

7 After trial, Petitioner was convicted of premeditated attempted murder (count 1), possession
8 of a shank while in jail or prison (count 3), and participation in a street gang (count 4). He was
9 sentenced to an indeterminate term of 30 years to life on count 1 and a consecutive determinate
10 term of eight years on counts 3 and 4.

11 In accordance with the foregoing, IT IS HEREBY ORDERED that:

- 12 1. Petitioner's application for writ of habeas corpus is granted with respect to his claim
13 that his conviction for possession of shank violated *Jackson*;
- 14 2. Respondent shall vacate Petitioner's conviction for possession of a shank in violation
15 of California Penal Code § 4502(a); and
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- 17 3. Respondent is ordered to recalculate Petitioner's sentence in accordance with this Order.
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19 IT IS SO ORDERED.

20 Dated: October 29, 2018

21 
22 SENIOR DISTRICT JUDGE
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