IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

CURT ALLEN BYRON, Petitioner, **v.** **SUPERIOR COURT OF CALIFORNIA,** Respondent.	**Case No. 1:13-cv-00456 MJS (HC)** **ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS AND DECLINING TO ISSUE CERTIFICATE OF APPEALABILITY**

Petitioner is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Respondent is represented by David Eldridge of the office of the California Attorney General. Both parties have consented to Magistrate Judge jurisdiction under 28 U.S.C. § 636(c). (ECF Nos. 13-14.)

I. PROCEDURAL BACKGROUND

Petitioner, a probationer, is currently in the custody of Respondent pursuant to a judgment of the Superior Court of California, County of Kern, following his June 12, 2012 convictions by jury trial of misdemeanor counts of resisting a police officer and driving without a driver's license, and the infraction of driving an unregistered vehicle. (Lodged Doc. 4, Reptr's Tr. at 130, 144.) On June 13, 2013, the trial court sentenced Petitioner to three years of probation, 30 days in custody, 200 hours of community service, and

monetary fines. (Id. at 155-56.)

Petitioner appealed the conviction. On September 26, 2012 he filed an appeal with the state superior court. (Lodged Doc. 5.) On January 4, 2013, the superior court affirmed the judgment without opinion. (Lodged Doc. 7.) On the same date, Petitioner filed an application to certify the case for transfer to the state court of appeal. (Lodged Doc. 8.) On February 5, 2013, Petitioner filed a petition for writ of mandate with the California Court of Appeal. (Lodged Doc. 11.) The petition was denied on February 15, 2013. (Id.) Petitioner then sought review from the California Supreme Court. (Lodged Doc. 12.) The Supreme Court denied the petition for review on March 13, 2013. (Id.)

Petitioner filed his federal habeas petition on March 18, 2013. (Pet., ECF No. 1.) The petition raises two grounds for relief: 1) that the trial court lacked jurisdiction because the criminal complaint was not verified; 2) and that Petitioner's Equal Protection rights were violated because the court allowed the prosecution to discuss the laws at issue for Petitioner's criminal cats, but prohibited him from discussing his view of the laws at issue. (Id.)

Respondent filed an answer to the petition on July 8, 2013. (Answer, ECF No. 15.) Petitioner did not file a traverse. The matter stands ready for adjudication.

II. STATEMENT OF THE FACTS

On February 18, 2012, California Highway Patrol officer Barnes watched Petitioner walk from a store at a Shell gas station to a vehicle lacking registration tags and drive onto a public road. (Reptr's Tr. ("RT") at 32-35, Lodged Doc. 4.) Based on prior contact with Petitioner, Barnes knew Petitioner was not licensed to drive. (Id.) Barnes made a traffic stop of the vehicle. (Id.)

At the stop, Petitioner refused to show a driver license or proof of vehicle registration. (RT at 36-37.) Petitioner ultimately gave Barnes a passport, and a resulting computer check revealed Petitioner's driver license had expired in 2010 and the vehicle registration had expired in 2006. (Id. at 38-39.) Barnes informed Petitioner that he would be cited, and then went to his vehicle and drafted the citation. (Id. at 39-40.) When

Barnes returned to Petitioner's vehicle, Petitioner refused to sign the citation. (Id. at 39-40.) Barnes directed Petitioner to exit, but Petitioner announced he could not exit because he had chained himself inside the vehicle. (Id. at 40.) Petitioner would not unlock himself, and he declined to give Barnes the keys to the locks. (Id. at 41.) Petitioner explained to the officer that he did not have to have a driver license or vehicle registration. (Id. at 41.) Backup arrived and Petitioner was unchained and removed. (Id. at 42-44.)

At trial, Petitioner testified that he removed the vehicle registration tags, that the California Vehicle Code is unconstitutional, and that he should not have been pulled over for suspicion of unlicensed driving. (RT at 82-84.) Petitioner admitted that his driver license was expired and he refused to register his vehicle (Id. at 87). Petitioner had carried chains in his vehicle for the specific purpose of resisting law enforcement efforts. (Id. at 85, 87.)

A jury convicted him of misdemeanor resisting an officer, Cal. Penal Code § 148(a)(1) and misdemeanor driving without a driver license, Cal. Veh. Code § 12500(a). The court convicted him of operating or parking an unregistered vehicle, an infraction. Cal. Veh. Code § 4000(a). (CT at 149-50; RT at 140, 144.) On the misdemeanors, imposition of sentence was suspended and he was put on three years probation subject to the conditions he serve thirty days in county jail and perform 200 hours community service. On the infraction, he was punished by a fine. (RT at 154-56.)

III. GOVERNING LAW

A. Jurisdiction

Relief by way of a petition for writ of habeas corpus extends to a person in custody pursuant to the judgment of a state court if the custody is in violation of the Constitution or laws or treaties of the United States. 28 U.S.C. § 2254(a); 28 U.S.C. § 2241(c)(3); Williams v. Taylor, 529 U.S. 362, 375 fn.7 (2000). Petitioner asserts that he suffered violations of his rights as guaranteed by the U.S. Constitution. In addition, the conviction challenged arises out of the Kern County Superior Court, which is located

within the jurisdiction of this court. 28 U.S.C. § 2241(d); 2254(a). Accordingly, the Court has jurisdiction over the action.

B. Legal Standard of Review

On April 24, 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), which applies to all petitions for writ of habeas corpus filed after its enactment. Lindh v. Murphy, 521 U.S. 320, 326 (1997); Jeffries v. Wood, 114 F.3d 1484, 1499 (9th Cir. 1997). The instant petition was filed after the enactment of the AEDPA; thus, it is governed by its provisions.

Under AEDPA, an application for a writ of habeas corpus by a person in custody under a judgment of a state court may be granted only for violations of the Constitution or laws of the United States. 28 U.S.C. § 2254(a); Williams v. Taylor, 529 U.S. at 375 n. 7 (2000). Federal habeas corpus relief is available for any claim decided on the merits in state court proceedings if the state court's adjudication of the claim:

> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States; or
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> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d).

1. Contrary to or an Unreasonable Application of Federal Law

A state court decision is "contrary to" federal law if it "applies a rule that contradicts governing law set forth in [Supreme Court] cases" or "confronts a set of facts that are materially indistinguishable from" a Supreme Court case, yet reaches a different result." Brown v. Payton, 544 U.S. 133, 141 (2005) citing Williams, 529 U.S. at 405-06. "AEDPA does not require state and federal courts to wait for some nearly identical factual pattern before a legal rule must be applied. . . . The statue recognizes . . . that even a general standard may be applied in an unreasonable manner" Panetti v. Quarterman, 551 U.S. 930, 953 (2007) (citations and quotation marks omitted). The "clearly established Federal law" requirement "does not demand more than a 'principle'

or 'general standard.'" Musladin v. Lamarque, 555 F.3d 830, 839 (2009). For a state decision to be an unreasonable application of clearly established federal law under § 2254(d)(1), the Supreme Court's prior decisions must provide a governing legal principle (or principles) to the issue before the state court. Lockyer v. Andrade, 538 U.S. 63, 70-71 (2003). A state court decision will involve an "unreasonable application of" federal law only if it is "objectively unreasonable." Id. at 75-76, quoting Williams, 529 U.S. at 409-10; Woodford v. Visciotti, 537 U.S. 19, 24-25 (2002). In Harrington v. Richter, the Court further stresses that "an *unreasonable* application of federal law is different from an *incorrect* application of federal law." 131 S. Ct. 770, 785 (2011), (citing Williams, 529 U.S. at 410) (emphasis in original). "A state court's determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the correctness of the state court's decision." Id. at 786 (citing Yarborough v. Alvarado, 541 U.S. 653, 664 (2004)). Further, "[t]he more general the rule, the more leeway courts have in reading outcomes in case-by-case determinations." Id.; Renico v. Lett, 130 S. Ct. 1855, 1864 (2010). "It is not an unreasonable application of clearly established Federal law for a state court to decline to apply a specific legal rule that has not been squarely established by this Court." Knowles v. Mirzayance, 129 S. Ct. 1411, 1419 (2009), quoted by Richter, 131 S. Ct. at 786.

2. Review of State Decisions

"Where there has been one reasoned state judgment rejecting a federal claim, later unexplained orders upholding that judgment or rejecting the claim rest on the same grounds." See Ylst v. Nunnemaker, 501 U.S. 797, 803 (1991). This is referred to as the "look through" presumption. Id. at 804; Plascencia v. Alameida, 467 F.3d 1190, 1198 (9th Cir. 2006). Determining whether a state court's decision resulted from an unreasonable legal or factual conclusion, "does not require that there be an opinion from the state court explaining the state court's reasoning." Richter, 131 S. Ct. at 784-85. "Where a state court's decision is unaccompanied by an explanation, the habeas petitioner's burden still must be met by showing there was no reasonable basis for the

state court to deny relief." Id. ("This Court now holds and reconfirms that § 2254(d) does not require a state court to give reasons before its decision can be deemed to have been 'adjudicated on the merits.'").

Richter instructs that whether the state court decision is reasoned and explained, or merely a summary denial, the approach to evaluating unreasonableness under § 2254(d) is the same: "Under § 2254(d), a habeas court must determine what arguments or theories supported or, as here, could have supported, the state court's decision; then it must ask whether it is possible fairminded jurists could disagree that those arguments or theories are inconsistent with the holding in a prior decision of this Court." Id. at 786. Thus, "even a strong case for relief does not mean the state court's contrary conclusion was unreasonable." Id. (citing Lockyer v. Andrade, 538 U.S. at 75). AEDPA "preserves authority to issue the writ in cases where there is no possibility fairminded jurists could disagree that the state court's decision conflicts with this Court's precedents." Id. To put it yet another way:

> As a condition for obtaining habeas corpus relief from a federal court, a state prisoner must show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.

Id. at 786-87. The Court then explains the rationale for this rule, i.e., "that state courts are the principal forum for asserting constitutional challenges to state convictions." Id. at 787. It follows from this consideration that § 2254(d) "complements the exhaustion requirement and the doctrine of procedural bar to ensure that state proceedings are the central process, not just a preliminary step for later federal habeas proceedings." Id. (citing Wainwright v. Sykes, 433 U.S. 72, 90 (1977).

3. Prejudicial Impact of Constitutional Error

The prejudicial impact of any constitutional error is assessed by asking whether the error had "a substantial and injurious effect or influence in determining the jury's verdict." Brecht v. Abrahamson, 507 U.S. 619, 623 (1993); see also Fry v. Pliler, 551 U.S. 112, 121-22 (2007) (holding that the Brecht standard applies whether or not the

state court recognized the error and reviewed it for harmlessness). Some constitutional errors, however, do not require that the petitioner demonstrate prejudice. See Arizona v. Fulminante, 499 U.S. 279, 310 (1991); United States v. Cronic, 466 U.S. 648, 659 (1984). Furthermore, where a habeas petition governed by AEDPA alleges ineffective assistance of counsel under Strickland v. Washington, 466 U.S. 668 (1984), the Strickland prejudice standard is applied and courts do not engage in a separate analysis applying the Brecht standard. Avila v. Galaza, 297 F.3d 911, 918, n. 7 (2002). Musalin v. Lamarque, 555 F.3d at 834.

IV. REVIEW OF PETITION

A. Claim 1: Failure to File a Verified Criminal Complaint

Petitioner, in his first claim, asserts that the trial court lacked jurisdiction because the prosecution did not file a verified complaint. Petitioner asserts that the failure to file a verified compliant violated his Fourteenth Amendment Due Process rights. Apparently Petitioner feels that California Vehicle Code section 40513(a) requires a verified complaint be filed as a prerequisite to prosecution and that his prosecution without one violated state law and so constituted a denial of state and federal due process. (See Pet. for Review [Lodged Doc. 12] at 14-28.)

Initially, a federal court conducting habeas review is limited to deciding whether a state court decision violates the Constitution, laws or treaties of the United States. 28 U.S.C. § 2254(a); Swarthout v. Cooke, 562 U.S. 216, 131 S. Ct. 859, 861, 178 L. Ed. 2d 732 (2011) (per curiam); Estelle v. McGuire, 502 U.S. 62, 67-68, 112 S. Ct. 475, 116 L. Ed. 2d 385 (1991). Federal habeas corpus relief "does not lie for errors of state law." Lewis v. Jeffers, 497 U.S. 764, 780, 110 S. Ct. 3092, 111 L. Ed. 2d 606 (1990); McGuire, 502 U.S. at 67. Accordingly, to the extent this claim challenges only the trial court's application of state law, or alleges that the trial court abused its discretion, such a claim does not set forth a cognizable ground for habeas corpus relief. See Williams v. Borg, 139 F.3d 737, 740 (9th Cir. 1998) (Federal habeas relief is available "only for constitutional violation, not for abuse of discretion.").

Assuming that the requirements of section 40513(a) were not followed by the state court, Petitioner does not explain how this violated his due process rights. Petitioner was provided a trial by jury with the opportunity to confront the state's witnesses. Petitioner has not presented any federal authority to support his conclusions that his federal rights were violated by the alleged failure to follow state law. McGuire, 502 U.S. at 67. Accordingly, Petitioner is not entitled to federal habeas relief on this claim. The state court's rejection of the claim was not contrary to, or an unreasonable application of, clearly established Supreme Court precedent, or involved an unreasonable determination of the facts. See 28 U.S.C. § 2254(d).

B. Claim 2: Equal Protection

Petitioner claims that the court failed to protect his right to equal protection of the law at trial. (See Pet. at 8.) Specifically, he alleges that the Court did not permit him to instruct the jury on his view of the laws in question but allowed the prosecuting attorney to explain to the jury his perspective on the laws in issue.

The Equal Protection Clause "embodies a general rule that States must treat like cases alike but may treat unlike cases accordingly." Vacco v. Quill, 521 U.S. 793, 799, 117 S. Ct. 2293, 138 L. Ed. 2d 834, (1997) (citing Plyler v. Doe, 457 U.S. 202, 216, 102 S. Ct. 2382, 72 L. Ed. 2d 786 (1982) and Tigner v. Texas, 310 U.S. 141, 147, 60 S. Ct. 879, 84 L. Ed. 1124 (1940)). The Fourteenth Amendment "guarantees equal laws, not equal results." McQueary v. Blodgett, 924 F.2d 829, 835 (9th Cir. 1991) (quoting Personnel Adm'r v. Feeney, 442 U.S. 256, 273, 99 S. Ct. 2282, 60 L. Ed. 2d 870 (1979)). A habeas petitioner has the burden of alleging facts sufficient to establish "a prima facie case of uneven application." McQueary, 924 F.2d at 835. "[A] mere demonstration of inequality is not enough . . . There must be an allegation of invidiousness or illegitimacy in the statutory scheme before a cognizable claim arises." Id.

Petitioner's theory regarding Equal Protection is without merit. Equal Protection requires the state to treat defendants equally. It does not create a requirement that criminal defendants are required the same protections as the prosecution. See Vargas v.

Yarborough, No. CV 04-1949-GHK (JEM), 2010 U.S. Dist. LEXIS 143424, 2010 WL 5559766, at *10 (C.D. Cal. Nov. 8, 2010) (finding failure to plead any allegations about differential treatment of similarly situated criminal defendants detrimental to the petitioner's equal protection claim), Hussey v. Long, 2014 U.S. Dist. LEXIS 46356, 48-52 (C.D. Cal. Feb. 10, 2014). Petitioner has only compared his treatment to that of the prosecution. He has not demonstrated that any other defendant similarly situated to him was treated differently. Petitioner has not met his burden of establishing a prima facie case of uneven application. See McQueary, 924 F.2d at 835. However, even if Petitioner had shown inequitable application, he has not alleged that there is "invidiousness or illegitimacy in the statutory scheme." Id.

Even assuming that Petitioner has alleged disparate treatment in violation of the Equal Protection Clause, Petitioner does not claim that such treatment was the result of his membership in a recognized protected class (see generally Pet.), so the Court analyzes petitioner's equal protection claim under rational basis review. See Heller v. Doe, 509 U.S. 312, 319-21, 113 S. Ct. 2637, 125 L. Ed. 2d 257 (1993); City of Cleburn, Tex., 473 U.S. at 446; see also Vargas, 2010 U.S. Dist. LEXIS 143424, 2010 WL 5559766, at *26 ("[p]etitioner's equal protection claim does not implicate either a suspect class or a fundamental right and need only be scrutinized under the rational basis test"). Under this test, the Court ascertains whether the state courts had a rational basis for the denial of Petitioner's right to challenge the judge's finding of relevant law. See Heller, 509 U.S. at 319-21. Further, rational basis review involves an "exceedingly low level of judicial scrutiny." See, Aleman v. Glickman, 217 F.3d 1191, 1200-01 (9th Cir. 2000).

It is well understood in American legal system that in general judges are to determine the relevant law, while the jury is the trier of fact. California has enacted legislation in 1872 to this effect. See Cal Pen. Code § 1124 ("The court must decide all questions of law which arise in the course of a trial.") Here, the trial court judge was exercising his duty to properly instruct the jury on the relevant law. His actions in rejecting Petitioner's right to instruct the jury regarding the law was rational and did not

violate Petitioner's Equal Protection rights.

The state courts' rejection of Petitioner's equal protection claim was not contrary to or an unreasonable application of federal law. Accordingly, Petitioner is not entitled to federal habeas relief on this claim.

V. CONCLUSION

Petitioner is not entitled to relief with regard to the claims presented in the instant petition. The Court therefore orders that the petition be DENIED.

VI. CERTIFICATE OF APPEALABILITY

A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition, and an appeal is only allowed in certain circumstances. Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003). The controlling statute in determining whether to issue a certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

> (a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.
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> (b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.
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> (c) (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from–
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> > (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or
> >
> > (B) the final order in a proceeding under section 2255.
>
> (2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.
>
> (3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

If a court denies a petitioner's petition, the court may only issue a certificate of appealability "if jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." Miller-El, 537 U.S. at 327; Slack v. McDaniel, 529 U.S. 473, 484 (2000). While the petitioner is not required to prove the merits of his case, he must demonstrate "something more than the absence of frivolity or the existence of mere good faith on his . . . part." Miller-El, 537 U.S. at 338.

In the present case, the Court finds that no reasonable jurist would find the Court's determination that Petitioner is not entitled to federal habeas corpus relief wrong or debatable, nor would a reasonable jurist find Petitioner deserving of encouragement to proceed further. Petitioner has not made the required substantial showing of the denial of a constitutional right. Accordingly, the Court hereby DECLINES to issue a certificate of appealability.

ORDER

Accordingly, IT IS HEREBY ORDERED:

1) The petition for writ of habeas corpus is DENIED;

2) The Clerk of Court is DIRECTED to enter judgment and close the case; and

3) The Court DECLINES to issue a certificate of appealability.

IT IS SO ORDERED.

Dated: October 30, 2014

/s/ *Michael J. Seng*
UNITED STATES MAGISTRATE JUDGE