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7 UNITED STATES DISTRICT COURT  
8 EASTERN DISTRICT OF CALIFORNIA  
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11 ROBERTO SANTIAGO RAMIREZ,  
12                                    Petitioner,  
13                                    v.  
14 SPEARMAN, Warden,  
15                                    Respondent.  
16

Case No. 1:14-cv-01798-AWI-SKO-HC  
  
FINDINGS AND RECOMMENDATIONS TO  
DISMISS PETITIONER'S STATE LAW  
CLAIM WITHOUT LEAVE TO AMEND  
(DOC. 1) AND REFER THE MATTER BACK  
TO THE MAGISTRATE JUDGE FOR  
FURTHER PROCEEDINGS  
  
**OBJECTIONS DEADLINE:**  
**THIRTY (30) DAYS**

17           Petitioner is a state prisoner proceeding pro se with a  
18 petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.  
19 The matter has been referred to the Magistrate Judge pursuant to  
20 28 U.S.C. § 636(b)(1) and Local Rules 302 and 304. Pending  
21 before the Court is the petition, which was filed on May 8,  
22 2014, and transferred to this Court by the United States  
23 District Court for the Northern District of California on  
24 November 17, 2014.

25           I. Screening the Petition

26           Rule 4 of the Rules Governing § 2254 Cases in the United  
27 States District Courts (Habeas Rules) requires the Court to make  
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1 a preliminary review of each petition for writ of habeas corpus.  
2 The Court must summarily dismiss a petition "[i]f it plainly  
3 appears from the petition and any attached exhibits that the  
4 petitioner is not entitled to relief in the district court...."  
5 Habeas Rule 4; O'Bremski v. Maass, 915 F.2d 418, 420 (9th Cir.  
6 1990); see also Hendricks v. Vasquez, 908 F.2d 490 (9th Cir.  
7 1990). Habeas Rule 2(c) requires that a petition 1) specify all  
8 grounds of relief available to the Petitioner; 2) state the  
9 facts supporting each ground; and 3) state the relief requested.  
10 Notice pleading is not sufficient; the petition must state facts  
11 that point to a real possibility of constitutional error. Rule  
12 4, Advisory Committee Notes, 1976 Adoption; O'Bremski v. Maass,  
13 915 F.2d at 420 (quoting Blackledge v. Allison, 431 U.S. 63, 75  
14 n.7 (1977)). Allegations in a petition that are vague,  
15 conclusory, or palpably incredible are subject to summary  
16 dismissal. Hendricks v. Vasquez, 908 F.2d at 491.

17 The Court may dismiss a petition for writ of habeas corpus  
18 either on its own motion under Habeas Rule 4, pursuant to the  
19 respondent's motion to dismiss, or after an answer has been  
20 filed. Advisory Committee Notes to Habeas Rule 8, 1976  
21 Adoption; see, Herbst v. Cook, 260 F.3d 1039, 1042-43 (9th Cir.  
22 2001). A petition for habeas corpus should not be dismissed  
23 without leave to amend unless it appears that no tenable claim  
24 for relief can be pleaded were such leave granted. Jarvis v.  
25 Nelson, 440 F.2d 13, 14 (9th Cir. 1971).

26 Petitioner alleges he is serving a sentence of twenty-seven  
27 years to life imposed in the Kern County Superior Court in  
28 January 1997 for shoplifting goods that Petitioner alleges were

1 worth under \$40.00. (Doc. 1 at 2, 7.) Petitioner alleges his  
2 sentence is disproportionate to his crime and as such violates  
3 the Eighth Amendment of the Constitution and Article I section  
4 17 of the constitution of the State of California.

5 II. State Law Claim

6 Because the petition was filed after April 24, 1996, the  
7 effective date of the Antiterrorism and Effective Death Penalty  
8 Act of 1996 (AEDPA), the AEDPA applies to the petition. Lindh  
9 v. Murphy, 521 U.S. 320, 327 (1997); Jeffries v. Wood, 114 F.3d  
10 1484, 1499 (9th Cir. 1997).

11 Federal habeas relief is available to state prisoners to  
12 correct violations of the United States Constitution, federal  
13 laws, or treaties of the United States. 28 U.S.C. § 2254(a).  
14 Federal habeas relief is not available to retry a state issue  
15 that does not rise to the level of a federal constitutional  
16 violation. Wilson v. Corcoran, 562 U.S. — , 131 S.Ct. 13, 16  
17 (2010); Estelle v. McGuire, 502 U.S. 62, 67-68 (1991). Alleged  
18 errors in the application of state law are not cognizable in  
19 federal habeas corpus. Souch v. Schaivo, 289 F.3d 616, 623 (9th  
20 Cir. 2002). The Court accepts a state court's interpretation of  
21 state law. Langford v. Day, 110 F.3d 1180, 1389 (9th Cir.  
22 1996). In a habeas corpus proceeding, this Court is bound by  
23 the California Supreme Court's interpretation of California law  
24 unless the interpretation is deemed untenable or a veiled  
25 attempt to avoid review of federal questions. Murtishaw v.  
26 Woodford, 255 F.3d 926, 964 (9th Cir. 2001).

27 Here, there is no indication that any application or  
28 interpretation of state law by the state courts was associated

1 with an attempt to avoid review of federal questions. Thus,  
2 this Court is bound by the state court's interpretation and  
3 application of state law.

4 Petitioner's allegation that his sentence violated the  
5 constitution of the State of California raises a state law  
6 claim. Because the claim concerning a violation of the state  
7 constitution rests solely on state law, it is not cognizable in  
8 a § 2254 proceeding and must be dismissed. The defect in this  
9 claim stems not from an absence of allegations of fact but  
10 rather from the nature of the claim as a state law claim.  
11 Accordingly, the claim will be dismissed without leave to amend  
12 because Petitioner could not allege a tenable state law claim  
13 that would warrant relief in this proceeding even if leave to  
14 amend were granted.

15 Petitioner's claim of cruel and unusual punishment in  
16 violation of the Eighth Amendment remains pending. It will be  
17 recommended that after dismissal of the state law claim, the  
18 case be referred back to the Magistrate Judge to order a  
19 response to the remaining claim and issue a scheduling order.

20 III. Recommendations

21 Accordingly, it is RECOMMENDED that:

22 1) Petitioner's state law claim that his sentence violates  
23 the constitution of the State of California be DISMISSED without  
24 leave to amend; and

25 2) Upon dismissal of the state law claim, the matter be  
26 referred back to the Magistrate Judge to order a response to the  
27 remaining claim and issue a scheduling order.

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1           These findings and recommendations are submitted to the  
2 United States District Court Judge assigned to the case,  
3 pursuant to the provisions of 28 U.S.C. § 636 (b) (1) (B) and Rule  
4 304 of the Local Rules of Practice for the United States  
5 District Court, Eastern District of California. Within 30 days  
6 after being served with a copy, any party may file written  
7 objections with the Court and serve a copy on all parties. Such  
8 a document should be captioned "Objections to Magistrate Judge's  
9 Findings and Recommendations." Replies to the objections shall  
10 be served and filed within 14 days (plus 3 days if served by  
11 mail) after service of the objections. The Court will then  
12 review the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636  
13 (b) (1) (C). The parties are advised that failure to file  
14 objections within the specified time may result in the waiver of  
15 rights on appeal. Wilkerson v. Wheeler, - F.3d -, -, no. 11-  
16 17911, 2014 WL 6435497, at \*3 (9th Cir. Nov. 18, 2014) (citing  
17 Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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20 IT IS SO ORDERED.

21 Dated: December 31, 2014

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE

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