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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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12 **JOSEPH R. MORALES, JR.,**

13 Petitioner,

14 v.

15
16 **AVENAL STATE PRISON,**

17 Respondent.
18

Case No. 1:15-cv-00669 MJS (HC)

**FINDINGS AND RECOMMENDATION TO
DISMISS PETITION FOR WRIT OF
HABEAS CORPUS FOR FAILING TO
STATE COGNIZABLE CLAIM**

**ORDER DIRECTING CLERK OF COURT
TO ASSIGN DISTRICT COURT JUDGE TO
THE PRESENT MATTER**

19 Petitioner is a state prisoner proceeding *pro se* with a petition for writ of habeas
20 corpus under the authority of 28 U.S.C. § 2254. Petitioner filed the instant petition for
21 writ of habeas corpus on May 1, 2015. (Pet., ECF No. 1.)

22 Petitioner was convicted of first degree burglary on November 19, 2010 in Tulare
23 County, but contends that the crime should have been reduced to a lesser charge. (*Id.* at
24 1.) Petitioner also alleges that his sentence was improperly calculated as six years rather
25 than four years, and that he should have been released on June 28, 2014. (*Id.* at 5.)
26 While Petitioner asserts that he is entitled to relief, he does not contend that any federal
27 laws were violated during the imposition of his sentence.
28

1 On May 7, 2015, the Court issued an order to show cause why the petition should
2 not be dismissed for failure to state a cognizable claim. (ECF No. 4.) Over thirty days
3 have passed, and Petitioner has not filed a response to the order to show cause.

4 **I. DISCUSSION**

5 **A. Procedural Grounds for Summary Dismissal**

6 Rule 4 of the Rules Governing Section 2254 Cases provides in pertinent part:
7 If it plainly appears from the petition and any attached exhibits that the
8 petitioner is not entitled to relief in the district court, the judge must dismiss
the petition and direct the clerk to notify the petitioner.

9 The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a
10 petition for writ of habeas corpus, either on its own motion under Rule 4, pursuant to the
11 respondent's motion to dismiss, or after an answer to the petition has been filed. A
12 petition for habeas corpus should not be dismissed without leave to amend unless it
13 appears that no tenable claim for relief can be pleaded were such leave granted. Jarvis
14 v. Nelson, 440 F.2d 13, 14 (9th Cir. 1971).

15 **B. Failure to State Cognizable Claim**

16 A federal court may only grant a petition for writ of habeas corpus if the petitioner
17 can show that "he is in custody in violation of the Constitution" 28 U.S.C. §
18 2254(a). A habeas corpus petition is the correct method for a prisoner to challenge the
19 "legality or duration" of his confinement. Badea v. Cox, 931 F.2d 573, 574 (9th Cir.
20 1991), quoting, Preiser v. Rodriguez, 411 U.S. 475, 485 (1973); Advisory Committee
21 Notes to Rule 1 of the Rules Governing Section 2254 Cases.

22 In contrast, a civil rights action pursuant to 42 U.S.C. § 1983 is the proper method
23 for a prisoner to challenge the conditions of that confinement. McCarthy v. Bronson, 500
24 U.S. 136, 141-42 (1991); Preiser, 411 U.S. at 499; Badea, 931 F.2d at 574; Advisory
25 Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases.

26 Petitioner seeks release from confinement. Therefore, his claims implicate the fact
27 or duration of his confinement, and are properly presented by way of a habeas corpus
28 petition. However, a district court may entertain a petition for a writ of habeas corpus by

1 a state prisoner only on the ground that the custody is in violation of the Constitution,
2 laws, or treaties of the United States. 28 U.S.C. §§ 2254(a), 2241(c)(3); Williams v.
3 Taylor, 529 U.S. 362, 375 n.7, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000); Wilson v.
4 Corcoran, 131 S. Ct. 13, 16, 178 L. Ed. 2d 276 (2010).

5 Federal habeas relief is not available to retry a state issue that does not rise to the
6 level of a federal constitutional violation. Wilson v. Corcoran, 131 S.Ct. at 16 (2010);
7 Estelle v. McGuire, 502 U.S. 62, 67-68, 112 S. Ct. 475, 116 L. Ed. 2d 385 (1991).
8 Alleged errors in the application of state law are not cognizable in federal habeas
9 corpus. Souch v. Schaivo, 289 F.3d 616, 623 (9th Cir. 2002) (an ex post facto claim
10 challenging state court's discretionary decision concerning application of state
11 sentencing law presented only state law issues and was not cognizable in a proceeding
12 pursuant to 28 U.S.C. § 2254); Langford v. Day, 110 F.3d 1380, 1389 (9th Cir. 1996).
13 The Court accepts a state court's interpretation of state law. Langford, 110 F.3d at 1389.
14 In a habeas corpus proceeding, this Court is bound by the California Supreme Court's
15 interpretation of California law unless the interpretation is deemed untenable or a veiled
16 attempt to avoid review of federal questions. Murtishaw v. Woodford, 255 F.3d 926, 964
17 (9th Cir. 2001).

18 In this case, Petitioner argues that the state courts improperly denied his release
19 under California laws, but does not raise any federal challenges to the application of the
20 state laws. Without alleging a federal basis for his claims, Petitioner has not presented
21 claims entitled to relief by way of federal habeas.

22 **II. RECOMMENDATION**

23 Accordingly, it is hereby recommended that the petition for a writ of habeas
24 corpus be DISMISSED with prejudice. Further, the Court orders the Clerk of Court to
25 assign a district court judge to the instant matter.

26 This Findings and Recommendation is submitted to the assigned District Judge,
27 pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30) days after
28 being served with the Findings and Recommendation, any party may file written

1 objections with the Court and serve a copy on all parties. Such a document should be
2 captioned "Objections to Magistrate Judge's Findings and Recommendation." Any reply
3 to the objections shall be served and filed within fourteen (14) days after service of the
4 objections. The parties are advised that failure to file objections within the specified time
5 may waive the right to appeal the District Court's order. Wilkerson v. Wheeler, 772 F.3d
6 834, 839 (9th Cir. 2014).

7
8 IT IS SO ORDERED.

9 Dated: June 17, 2015

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE