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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

VASILIS SAKELLARIDIS,

Petitioner,

v.

DAVE DAVEY,

Respondent.

Case No. 1:15-cv-01154-DAD-EPG-HC

FINDINGS AND RECOMMENDATION TO  
GRANT RESPONDENT’S MOTION TO  
DISMISS AND TO DISMISS PETITION  
FOR WRIT OF HABEAS CORPUS

Petitioner Vasilis Sakellaridis is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. In his petition, Petitioner challenges the California Department of Corrections and Rehabilitation’s application of the credit limitation set forth in California Penal Code section 2933.1 to Petitioner’s sentence. The Court recommends granting Respondent’s motion to dismiss because Petitioner fails to state a cognizable claim for federal habeas relief.

**I.**

**BACKGROUND**

On July 19, 2005, Petitioner was convicted in the San Bernardino County Superior Court for robbery. (ECF No. 1 at 1).<sup>1</sup> On March 27, 2009, Petitioner was sentenced to an imprisonment term of fourteen years. (*Id.*). On May 15, 2009, Petitioner was received into the custody of the

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<sup>1</sup> Page numbers refer to the ECF page numbers stamped at the top of the page.

1 California Department of Corrections and Rehabilitation (“CDCR”), which applied the credit  
2 limitation specified in California Penal Code section 2933.1 to Petitioner’s sentence. (ECF No.  
3 12 at 2; ECF No. 12-1 at 25).

4 On January 17, 2014, Petitioner attended a Computation Review Hearing. (ECF No. 12-1  
5 at 25). Petitioner’s administrative appeal was denied at the second level of review. (Id.). On  
6 August 14, 2014, Petitioner’s administrative appeal was denied at the third level of review, and  
7 the credit limitation the CDCR applied to Petitioner’s sentence in 2009 was confirmed to be  
8 valid. (Id. at 26). Thereafter, Petitioner filed a state habeas corpus petition with the California  
9 Supreme Court, which denied the petition on June 24, 2015. (ECF No. 1 at 19–26, 28). On July  
10 24, 2015, Petitioner filed the instant federal petition for writ of habeas corpus. (ECF No. 1). On  
11 November 5, 2015, Respondent filed a motion to dismiss. (ECF No. 12). On November 18, 2015,  
12 Petitioner filed an opposition to the motion to dismiss. (ECF No. 13).

## 13 II.

### 14 DISCUSSION

#### 15 A. Statute of Limitations

16 On April 24, 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act  
17 of 1996 (“AEDPA”). The AEDPA imposes various requirements on all petitions for writ of  
18 habeas corpus filed after the date of its enactment. Lindh v. Murphy, 521 U.S. 320 (1997);  
19 Jeffries v. Wood, 114 F.3d 1484, 1499 (9th Cir. 1997) (en banc). As the instant petition was filed  
20 on July 24, 2015, it is subject to the provisions of the AEDPA. The AEDPA imposes a one-year  
21 period of limitation on petitioners seeking to file a federal petition for writ of habeas corpus. 28  
22 U.S.C. § 2244(d)(1). Section 2244(d) provides in pertinent part:

23 (1) A 1-year period of limitation shall apply to an application for a  
24 writ of habeas corpus by a person in custody pursuant to the  
25 judgment of a State court. The limitation period shall run from the  
latest of –

26 . . .

27 (D) the date on which the factual predicate of the claim or claims  
28 presented could have been discovered through the exercise of due  
diligence.

1 (2) The time during which a properly filed application for State  
2 post-conviction or other collateral review with respect to the  
3 pertinent judgment or claim is pending shall not be counted toward  
any period of limitation under this subsection.

4 28 U.S.C. § 2244(d). The Ninth Circuit has held that when a habeas petitioner challenges an  
5 administrative decision, § 2244(d)(1)(D) applies and the AEDPA’s one-year limitations period  
6 runs from when the factual predicate of the habeas claim could have been discovered through the  
7 exercise of due diligence. Mardesich v. Cate, 668 F.3d 1164, 1172 (9th Cir. 2012). The Ninth  
8 Circuit further held that “[a]s a general rule, the state agency’s denial of an administrative appeal  
9 is the ‘factual predicate’ for such habeas claims.” Id.

10 Respondent argues that Petitioner could have been aware of the factual predicate of his  
11 claim in 2009 when the CDCR applied the credit limitation to his sentence pursuant to California  
12 Penal Code section 2933.1. (Id. at 4). Therefore, Respondent concludes, the instant petition was  
13 filed outside the one-year limitations period. (Id.). The Court finds Respondent’s argument  
14 unpersuasive. Respondent has not identified, and the Court is not aware of, an exception to the  
15 Ninth Circuit’s “general rule” that would deem the initial administrative decision the “factual  
16 predicate” rather than the denial of the administrative appeal. Here, Petitioner’s administrative  
17 appeal was denied on August 14, 2014, and the limitation period began running the next day.  
18 The instant petition was filed on July 25, 2015, within the one-year limitation period.<sup>2</sup>  
19 Accordingly, the Court finds the petition is timely and dismissal is not warranted on this ground.

20 **B. Cognizable Claim for Federal Habeas Relief**

21 Respondent also asserts the petition should be dismissed because Petitioner only raises  
22 errors of state law, which are not cognizable in federal habeas proceedings. (ECF No. 12 at 3).  
23 Petitioner argues that California Penal Code sections 2933.1 and 667.5 violate article IV, section  
24 9 of the California Constitution. Petitioner argues that the California Constitution is a contract  
25 between the state and its citizens, and so California Penal Code sections 2933.1 and 667.5 violate  
26 the Contract Clause of the United States Constitution. (ECF No. 1 at 6–7).

27 \_\_\_\_\_  
28 <sup>2</sup> The Court also notes that pursuant to 28 U.S.C. § 2244(d)(2), the time during which Petitioner’s state habeas  
petition was pending in the California Supreme Court statutorily tolled the limitations period.

1 “No State shall . . . pass any . . . Law impairing the Obligation of Contracts.” U.S. Const.  
2 art. I, § 10. Here, Petitioner argues that California Penal Code sections 2933.1 and 667.5 violate  
3 the Contract Clause by impairing the obligation created by article IV, section 9 of the California  
4 Constitution, which provides:

5 A statute shall embrace but one subject, which shall be expressed  
6 in its title. If a statute embraces a subject not expressed in its title,  
7 only the part not expressed is void. A statute may not be amended  
8 by reference to its title. A section of a statute may not be amended  
9 unless the section is re-enacted as amended.

10 Cal. Const. art. IV, § 9. This is known as the “single-subject rule,” the purpose of which “is to  
11 prevent misleading or inaccurate titles so that legislators and the public are afforded reasonable  
12 notice of the contents of a statute.” Marathon Entm’t, Inc. v. Blasi, 42 Cal. 4th 974, 988 (2008).  
13 There is no parallel provision in the United States Constitution to article IV, section 9 of the  
14 California Constitution.

15 The Supreme Court has held that “a statute is itself treated as a contract [for purposes of  
16 the Contract Clause] when the language and circumstances evince a legislative intent to create  
17 private rights of a contractual nature enforceable against the State.” U.S. Trust Co. of New York  
18 v. New Jersey, 431 U.S. 1, 18 (1977). “[A]bsent some clear indication that the legislature intends  
19 to bind itself contractually, the presumption is that ‘a law is not intended to create private  
20 contractual or vested rights . . . .’” Nat’l R.R. Passenger Corp. v. Atchison Topeka & Santa Fe  
21 Ry. Co., 470 U.S. 451, 465–66 (1985) (quoting Dodge v. Board of Education, 302 U.S. 74, 79  
22 (1937)). It is the burden of “the party asserting the creation of a contract [to] overcome this well-  
23 founded presumption.” Id. at 466. There is no clear indication that the legislature intended to  
24 bind itself contractually in article IV, section 9 of the California Constitution, and Petitioner has  
25 failed to overcome the presumption that a law is not intended to create private contractual rights.

26 Although Petitioner attempts to make out a federal claim by claiming a violation of the  
27 Contract Clause, the instant petition challenges the application of the credit limitation set forth in  
28 California Penal Code section 2933.1 to Petitioner’s sentence. If the Court were to accept  
Petitioner’s argument, it would lead to the absurd result that every violation of the California  
Constitution constitutes a violation of the United States Constitution. The Supreme Court “ha[s]

1 stated many times that federal habeas corpus relief does not lie for errors of state law.”  
2 Swarthout v. Cooke, 562 U.S. 216, 219 (2011) (internal quotation marks omitted) (quoting  
3 Estelle v. McGuire, 502 U.S. 62, 67 (1991)). Based on the foregoing, the Court finds that  
4 Petitioner has failed to state a cognizable claim for federal habeas relief, and dismissal is  
5 warranted on this ground.

6 **III.**

7 **RECOMMENDATION**

8 Accordingly, the Court HEREBY RECOMMENDS that:

- 9 1. Respondent’s Motion to Dismiss be GRANTED; and  
10 2. The petition for writ of habeas corpus be DISMISSED.

11 This Findings and Recommendation is submitted to the assigned United States District  
12 Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local  
13 Rules of Practice for the United States District Court, Eastern District of California. Within  
14 **THIRTY (30) days** after service of the Findings and Recommendation, any party may file  
15 written objections with the court and serve a copy on all parties. Such a document should be  
16 captioned “Objections to Magistrate Judge’s Findings and Recommendation.” Replies to the  
17 objections shall be served and filed within fourteen (14) days after service of the objections. The  
18 assigned United States District Court Judge will then review the Magistrate Judge’s ruling  
19 pursuant to 28 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within  
20 the specified time may waive the right to appeal the District Court’s order. Wilkerson v.  
21 Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th  
22 Cir. 1991)).

23  
24 IT IS SO ORDERED.

25 Dated: June 1, 2016

26 /s/ Eric P. Gray  
27 UNITED STATES MAGISTRATE JUDGE  
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