



1 Petitioner appealed to the California Court of Appeal, Fifth District Court, which affirmed the  
2 judgment in a reasoned decision January 28, 2016. People v. Johnson, 244 Cal. App. 4th 384, 388  
3 (2016), *review denied* (Apr. 20, 2016). Petitioner then filed a petition for review in the California  
4 Supreme Court. The petition was summarily denied on April 20, 2016. (Doc. No. 1 at 2.)

5 Petitioner filed this federal petition in this Court on March 20, 2017. (Doc. No. 1.)

## 6 **II. DISCUSSION**

### 7 **A. Preliminary Review of Petition**

8 Rule 4 of the Rules Governing Section 2254 Cases requires the Court to make a preliminary  
9 review of each petition for writ of habeas corpus. The Court must summarily dismiss a petition “[i]f it  
10 plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in  
11 the district court . . . .” Rule 4; O’Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990). The Advisory  
12 Committee Notes to Rule 8 indicate that the Court may dismiss a petition for writ of habeas corpus,  
13 either on its own motion under Rule 4, pursuant to the respondent’s motion to dismiss, or after an  
14 answer to the petition has been filed.

### 15 **B. Failure to State a Cognizable Federal Claim**

16 The basic scope of habeas corpus is prescribed by statute. Title 28 U.S.C. § 2254(a) states:

17 The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain  
18 an application for a writ of habeas corpus in behalf of a person in custody pursuant to a  
19 judgment of a State court *only on the ground that he is in custody in violation of the  
20 Constitution or laws or treaties of the United States.*

21 (emphasis added). See also Rule 1 to the Rules Governing Section 2254 Cases in the United States  
22 District Court. The Supreme Court has held that “the essence of habeas corpus is an attack by a  
23 person in custody upon the legality of that custody . . . .” Preiser v. Rodriguez, 411 U.S. 475, 484  
(1973).

24 Furthermore, in order to succeed in a petition pursuant to 28 U.S.C. § 2254, Petitioner must  
25 demonstrate that the adjudication of his claim in state court

26 (1) resulted in a decision that was contrary to, or involved an unreasonable application  
27 of, clearly established Federal law, as determined by the Supreme Court of the United  
28 States; or (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.

1 28 U.S.C. § 2254(d)(1),(2).

2 It is well-settled that federal habeas relief is not available to state prisoners challenging state  
3 law. Estelle v. McGuire, 502 U.S. 62, 67 (1991) (“We have stated many times that federal habeas  
4 corpus relief does not lie for errors of state law); Langford v. Day, 110 F.3d 1380, 1389 (9<sup>th</sup> Cir. 1997)  
5 (“alleged errors in the application of state law are not cognizable in federal habeas corpus”  
6 proceedings).

7 Petitioner challenges the state court’s application of state sentencing laws. Such a claim does  
8 not give rise to a federal question cognizable on federal habeas review. Lewis v. Jeffers, 497 U.S. 764  
9 (1990); Sturm v. California Youth Authority, 395 F.2d 446, 448 (9<sup>th</sup> Cir. 1967) (“a state court’s  
10 interpretation of its [sentencing] statute does not raise a federal question”). In order to state a claim  
11 for relief, Petitioner must demonstrate that the state committed sentencing error, and that the error was  
12 “so arbitrary or capricious as to constitute an independent due process” violation. Richmond v. Lewis,  
13 506 U.S. 40 (1992). Petitioner has failed to demonstrate such a violation here, because on its face, the  
14 petition shows no sentencing error or arbitrariness.

15 Cal. Penal Code § 1170.126(b) allows the sentencing court to recall sentences only for those  
16 prisoners whose convictions are for “a felony or felonies that [is/]are not defined as serious and/or  
17 violent felonies by subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7” and who do  
18 not meet one of the exclusions in Section 667.5 (e)(2)(C). Section 1192.7(c)(8) renders ineligible for  
19 resentencing “[a]ny felony in which the defendant inflicts great bodily injury on any person, other than  
20 an accomplice . . . .” In this case, Petitioner was found guilty of inflicting serious bodily injury on a  
21 person other than an accomplice. Johnson, 244 Cal.App.4th at 390. The state court in Johnson further  
22 held that “‘serious bodily injury,’ as that term is used in section 243, subdivision (d) and defined in  
23 section 243, subdivision (f)(4), is the equivalent of ‘great bodily injury,’ as that phrase is used in  
24 section 1192.7, subdivision (c)(8).” Johnson, 244 Cal. App. 4th at 387. Therefore, Petitioner was  
25 determined to be ineligible for resentencing. This Court is bound by the state court’s interpretation in  
26 Johnson of how Section 1170.126 applies to convictions such as Petitioner’s. Bradshaw v. Richey,  
27 548 U.S. 74, 76 (2005) (per curiam). Insofar as this Court is bound by the state court’s determination  
28 that no sentencing error occurred, Petitioner fails to state a cognizable federal habeas claim. The

1 petition should be dismissed.

2 **III. ORDER**

3 The Clerk of Court is **DIRECTED** to assign a district judge to the case.

4 **IV. RECOMMENDATION**

5 Accordingly, the Court **RECOMMENDS** that the petition for writ of habeas corpus be  
6 **SUMMARILY DISMISSED** for failure to state a claim.

7 This Findings and Recommendation is submitted to the United States District Court Judge  
8 assigned to this case, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304 of the  
9 Local Rules of Practice for the United States District Court, Eastern District of California. Within  
10 twenty-one days after being served with a copy, Petitioner may file written objections with the court  
11 and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate  
12 Judge’s Findings and Recommendation.” The Court will then review the Magistrate Judge’s ruling  
13 pursuant to 28 U.S.C. § 636 (b)(1)(C). Petitioner is advised that failure to file objections within the  
14 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d  
15 1153 (9<sup>th</sup> Cir. 1991).

16  
17 IT IS SO ORDERED.

18 Dated: March 30, 2017

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE