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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

9 ARTURO RODRIGUEZ,

10 Petitioner,

11 v.

12 DAVE DAVEY,

13 Respondent.

Case No. 1:17-cv-00421-LJO-EPG-HC

FINDINGS AND RECOMMENDATION
RECOMMENDING DISMISSAL OF
PETITION FOR WRIT OF HABEAS
CORPUS

(ECF No. 1)

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15 Petitioner Arturo Rodriguez is a state prisoner proceeding *pro se* with a petition for writ
16 of habeas corpus pursuant to 28 U.S.C. § 2254. As the instant petition fails to state a cognizable
17 federal habeas claim, the Court recommends dismissal of the petition.

18 **I.**

19 **DISCUSSION**

20 Rule 4 of the Rules Governing Section 2254 Cases requires preliminary review of a
21 habeas petition and allows a district court to dismiss a petition before the respondent is ordered
22 to file a response, if it “plainly appears from the petition and any attached exhibits that the
23 petitioner is not entitled to relief in the district court.”

24 In his sole claim for relief, Petitioner challenges his sentence on due process grounds,
25 arguing that his sentence violates California Penal Code sections 1170.1(f) and 1170(b). (ECF
26 No. 1 at 4).¹ Whether Petitioner’s sentence violates California Penal Code sections 1170.1(f) and
27 1170(b) is an issue of state law. Petitioner may not “transform a state-law issue into a federal one

28 ¹ Page numbers refer to ECF page numbers stamped at the top of the page.

1 merely by asserting a violation of due process. We accept a state court’s interpretation of state
2 law, and alleged errors in the application of state law are not cognizable in federal habeas
3 corpus.” Langford v. Day, 110 F.3d 1380, 1389 (9th Cir. 1996) (citations omitted). See also
4 Swarthout v. Cooke, 562 U.S. 216, 219 (2011) (*per curiam*) (“We have stated many times that
5 federal habeas corpus relief does not lie for errors of state law.”) (quoting Estelle v. McGuire,
6 502 U.S. 62, 67 (1991)).

7 Accordingly, Petitioner’s claim is not cognizable in federal habeas corpus and should be
8 dismissed.

9 **III.**
10 **RECOMMENDATION**

11 Based on the foregoing, the Court HEREBY RECOMMENDS that the petition for writ of
12 habeas corpus be DISMISSED.

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

23
24 IT IS SO ORDERED.

25 Dated: May 15, 2017

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