



1 **II. DISCUSSION**

2 A. Preliminary Review of Petition

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

10 B. Failure to State a Cognizable Federal Claim

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

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

15 (emphasis added). See also Rule 1 to the Rules Governing Section 2254 Cases in the United States  
16 District Court. The Supreme Court has held that “the essence of habeas corpus is an attack by a  
17 person in custody upon the legality of that custody . . . .” Preiser v. Rodriguez, 411 U.S. 475, 484  
18 (1973).

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

21 (1) resulted in a decision that was contrary to, or involved an unreasonable application  
22 of, clearly established Federal law, as determined by the Supreme Court of the United  
23 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.

24 28 U.S.C. § 2254(d)(1),(2).

25 It is well-settled that federal habeas relief is not available to state prisoners challenging state  
26 law. Estelle v. McGuire, 502 U.S. 62, 67 (1991) (“We have stated many times that federal habeas  
27 corpus relief does not lie for errors of state law); Langford v. Day, 110 F.3d 1380, 1389 (9th Cir.  
28 1997) (“alleged errors in the application of state law are not cognizable in federal habeas corpus”

1 proceedings).

2 In this case, Petitioner presents one ground for relief: He claims that California Senate Bill No.  
3 620 should apply to Petitioner's case retroactively and the matter should be remanded to the superior  
4 court to permit the sentencing court to strike firearm sentence enhancements. Petitioner challenges the  
5 state court's application of state sentencing laws. Such a claim does not give rise to a federal question  
6 cognizable on federal habeas review. Lewis v. Jeffers, 497 U.S. 764 (1990); Sturm v. California  
7 Youth Authority, 395 F.2d 446, 448 (9<sup>th</sup> Cir. 1967) ("a state court's interpretation of its [sentencing]  
8 statute does not raise a federal question"). In order to state a claim for relief, Petitioner must  
9 demonstrate that the state committed sentencing error, and that the error was "so arbitrary or  
10 capricious as to constitute an independent due process" violation. Richmond v. Lewis, 506 U.S. 40  
11 (1992). Petitioner has failed to demonstrate such a violation here, because on its face, the petition  
12 shows no sentencing error or arbitrariness. He states only that the parties agree that Senate Bill 620  
13 applies to his case, but they disagree on whether remand is required. Furthermore, Petitioner claims  
14 no violation of his federal constitutional rights. Petitioner fails to state a cognizable federal habeas  
15 claim and the petition should be dismissed.

16 C. Failure to Name a Proper Respondent

17 A petitioner seeking habeas corpus relief under 28 U.S.C. § 2254 must name the state officer  
18 having custody of him as the respondent to the petition. Rule 2 (a) of the Rules Governing § 2254  
19 Cases; Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996); Stanley v. California Supreme  
20 Court, 21 F.3d 359, 360 (9th Cir. 1994). Normally, the person having custody of an incarcerated  
21 petitioner is the warden of the prison in which the petitioner is incarcerated because the warden has  
22 "day-to-day control over" the petitioner. Brittingham v. United States, 982 F.2d 378, 379 (9th Cir.  
23 1992); see also Stanley, 21 F.3d at 360. However, the chief officer in charge of state penal institutions  
24 is also appropriate. Ortiz, 81 F.3d at 894; Stanley, 21 F.3d at 360. Where a petitioner is on probation  
25 or parole, the proper respondent is his probation or parole officer and the official in charge of the  
26 parole or probation agency or state correctional agency. Id.

27 In this case, Petitioner names Xavier Becerra as Respondent in this matter. Xavier Becerra is  
28 neither the person having custody of Petitioner, nor the chief officer in charge of California penal

1 institutions. Petitioner’s failure to name a proper respondent requires dismissal of his habeas petition  
2 for lack of jurisdiction. Stanley, 21 F.3d at 360; Olson v. California Adult Auth., 423 F.2d 1326, 1326  
3 (9th Cir. 1970); see also Billiteri v. United States Bd. Of Parole, 541 F.2d 938, 948 (2nd Cir. 1976).  
4 Ordinarily, the Court would give Petitioner the opportunity to cure this defect by amending the  
5 petition to name a proper respondent. In this case, however, Petitioner also fails to state a cognizable  
6 claim for relief. Therefore, the Court will recommend the petition be dismissed.

7 **III. RECOMMENDATION**

8 Accordingly, the Court **RECOMMENDS** that the instant Petition for Writ of Habeas Corpus  
9 be **SUMMARILY DISMISSED** with prejudice for failure to state a claim.

10 This Findings and Recommendation is submitted to the United States District Court Judge  
11 assigned to this case, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304 of the  
12 Local Rules of Practice for the United States District Court, Eastern District of California. Within  
13 twenty-one days after being served with a copy, Petitioner may file written objections with the Court.  
14 Such a document should be captioned “Objections to Magistrate Judge’s Findings and  
15 Recommendation.” The Court will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. §  
16 636 (b)(1)(C). Petitioner is advised that failure to file objections within the specified time may waive  
17 the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

18  
19 IT IS SO ORDERED.

20 Dated: April 27, 2018

/s/ Jennifer L. Thurston  
21 UNITED STATES MAGISTRATE JUDGE