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

JUAN MIGUEL LOPEZ,  
Petitioner,  
v.  
STU SHERMAN,  
Respondent.

Case No. 1:18-cv-01528-AWI-SAB-HC  
FINDINGS AND RECOMMENDATION TO  
DISMISS PETITION FOR WRIT OF  
HABEAS CORPUS

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

**I.**  
**DISCUSSION**

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

By statute, federal courts “shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the 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.” 28 U.S.C. § 2254(a). “[T]he second use of ‘in custody’ in the statute requires literally that the person

1 applying for the writ is contending that he is ‘in custody’ in violation of *the Constitution or other*  
2 *federal laws.*” Bailey v. Hill, 599 F.3d 976, 979 (9th Cir. 2010) (emphasis added). See Dickerson  
3 v. United States, 530 U.S. 428, 439 n.3 (2000).

4 In the instant petition, Petitioner asserts that his sentence violates California Penal Code  
5 section 1170.1 and should be recalled pursuant to California Penal Code section 1170.126  
6 because recent cases have held that second-degree robbery is not a violent felony. (ECF No. 1 at  
7 6).<sup>1</sup> Whether Petitioner’s sentence is lawful under the California Penal Code is an issue of state  
8 law, and errors of state law do not warrant federal habeas corpus relief. See Wilson v. Corcoran,  
9 562 U.S. 1, 5 (2010) (per curiam) (“[I]t is only noncompliance with federal law that renders a  
10 State’s criminal judgment susceptible to collateral attack in the federal courts.”); Estelle v.  
11 McGuire, 502 U.S. 62, 67–68 (1991) (“We have stated many times that ‘federal habeas corpus  
12 relief does not lie for errors of state law.’ Today, we reemphasize that it is not the province of a  
13 federal habeas court to reexamine state-court determinations on state-law questions.” (citations  
14 omitted)). Accordingly, Petitioner’s challenge of his sentence is not cognizable in federal habeas  
15 corpus, and the petition should be dismissed.

## 16 II.

### 17 RECOMMENDATION

18 Accordingly, the undersigned HEREBY RECOMMENDS that the petition for writ of  
19 habeas corpus be DISMISSED for failure to state a cognizable federal habeas claim.

20 This Findings and Recommendation is submitted to the assigned United States District  
21 Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local  
22 Rules of Practice for the United States District Court, Eastern District of California. Within  
23 **THIRTY (30) days** after service of the Findings and Recommendation, Petitioner may file  
24 written objections with the court and serve a copy on all parties. Such a document should be  
25 captioned “Objections to Magistrate Judge’s Findings and Recommendation.” The assigned  
26 United States District Court Judge will then review the Magistrate Judge’s ruling pursuant to 28  
27 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within the specified

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

1 time may waive the right to appeal the District Court's order. Wilkerson v. Wheeler, 772 F.3d  
2 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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4 IT IS SO ORDERED.

5 Dated: November 26, 2018

  
UNITED STATES MAGISTRATE JUDGE

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