

1 1:00-cv-06278-OWW-HGB.¹ The judgment was affirmed by the California Court of Appeal, Fifth
2 Appellate District in an unpublished opinion filed on January 21, 2000. Id. Review was summarily
3 denied by the California Supreme Court on March 29, 2000. Id.

4 Petitioner previously filed a petition for writ of habeas corpus in this Court on August 9, 2000,
5 which was dismissed with leave to amend for failure to exhaust, and ultimately dismissed for failure to
6 comply with a court order. Id. On March 4, 2020, Petitioner filed the instant habeas petition in this
7 Court. (Doc. 1.)

8 **II. DISCUSSION**

9 A. Preliminary Review of Petition

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

17 B. Failure to State a Cognizable Federal Claim

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

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

22 (emphasis added). See also Rule 1 to the Rules Governing Section 2254 Cases in the United States
23 District Court. The Supreme Court has held that “the essence of habeas corpus is an attack by a
24 person in custody upon the legality of that custody” Preiser v. Rodriguez, 411 U.S. 475, 484
25 (1973).

26 To succeed in a petition pursuant to 28 U.S.C. § 2254, Petitioner must demonstrate that the
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28 ¹ The Court may take judicial notice of its own records in other cases. United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).

1 adjudication of his claim in state court

2 (1) resulted in a decision that was contrary to, or involved an unreasonable application
3 of, clearly established Federal law, as determined by the Supreme Court of the United
4 States; or (2) resulted in a decision that was based on an unreasonable determination of
5 the facts in light of the evidence presented in the State court proceeding.

6 28 U.S.C. § 2254(d)(1), (2). In addition to the above, Rule 2(c) of the Rules Governing Section 2254

7 Cases requires that the petition:

- 8 (1) Specify all the grounds for relief available to the petitioner;
9 (2) State the facts supporting each ground;
10 (3) State the relief requested;
11 (4) Be printed, typewritten, or legibly handwritten; and
12 (5) Be signed under penalty of perjury by the petitioner or by a person authorized to sign it for
13 the petitioner under 28 U.S.C. § 2242.

14 Petitioner fails to allege a violation of the Constitution or Federal law. It is well-settled that
15 federal habeas relief is not available to state prisoners challenging state law. Estelle v. McGuire, 502
16 U.S. 62, 67 (1991) (“We have stated many times that federal habeas corpus relief does not lie for
17 errors of state law); Langford v. Day, 110 F.3d 1380, 1389 (9th Cir. 1997) (“alleged errors in the
18 application of state law are not cognizable in federal habeas corpus” proceedings).

19 Petitioner challenges the state court’s application of state sentencing laws based on alleged
20 new case law.² Such claims do not give rise to a federal question cognizable on federal habeas review.
21 Lewis v. Jeffers, 497 U.S. 764 (1990); Sturm v. California Youth Authority, 395 F.2d 446, 448 (9th
22 Cir. 1967) (“a state court’s interpretation of its [sentencing] statute does not raise a federal question”).
23 To state a claim for relief, Petitioner must demonstrate that the state committed sentencing error, and
24 that the error was “so arbitrary or capricious as to constitute an independent due process” violation.
25 Richmond v. Lewis, 506 U.S. 40 (1992). Petitioner has failed to demonstrate such a violation here,
26 because on its face, the petition shows no sentencing error or arbitrariness.

27 In addition, Petitioner’s allegations of ineffective assistance of counsel and prosecutorial
28 misconduct are untimely. Also, to the extent Petitioner is trying to raise claims by attaching his state
29 briefs, those claims are also untimely. The AEDPA imposes a one-year period of limitation on

² Petitioner also lists as a fourth claim that “Petitioner’s Illiterate! Needs Assistance!” (Doc. 1 at 14.) However, this is clearly not a cognizable federal claim.

1 petitioners seeking to file a federal petition for writ of habeas corpus. 28 U.S.C. § 2244(d)(1).
2 Pursuant to § 2244(d)(1)(A), the one-year limitations period runs from the date on which the judgment
3 became final by the conclusion of direct review or the expiration of the time for seeking such review.
4 According to California Rules of Court, Rule 8.308(a), a criminal defendant convicted of a felony
5 must file his notice of appeal within sixty days of the rendition of judgment. See People v. Mendez,
6 19 Cal.4th 1084, 1086 (1999) (citing prior Rule of Court, Rule 31(d)). In this case, judgment was
7 entered by the Superior Court of California, County of Fresno on January 22, 1998. Martinez v.
8 Terhune, Case No. 1:00-cv-06278-OWW-HGB. The judgment was affirmed by the California Court
9 of Appeal, Fifth Appellate District in an unpublished opinion filed on January 21, 2000. Id. Review
10 was summarily denied by the California Supreme Court on March 29, 2000. Id. The one-year period
11 under the AEDPA commenced the following day, on March 30, 2000, and concluded one year from
12 that date, on March 29, 2001. Petitioner did not file the instant federal petition until March 4, 2020,
13 nor did he file anything in the state courts during the limitations period. Thus, these claims are
14 untimely. See Patterson v. Stewart, 251 F.3d 1243, 1245 (9th Cir. 2001).

15 **III. ORDER**

16 The Court DIRECTS the Clerk of Court to assign a district judge to the case.

17 **IV. RECOMMENDATION**

18 Accordingly, the Court RECOMMENDS that the habeas corpus petition be SUMMARILY
19 DISMISSED.

20 This Findings and Recommendation is submitted to the United States District Court Judge
21 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the
22 Local Rules of Practice for the United States District Court, Eastern District of California. Within
23 thirty days after being served with a copy, Petitioner may file written objections with the Court. Such
24 a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendation.”
25 The Court will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C).

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1 Failure to file objections within the specified time may waive the right to appeal the District
2 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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4 IT IS SO ORDERED.

5 Dated: March 31, 2020

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

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