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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 BILLY JEROME LACEY,)
11) Case No. 2:07-cv-02640-VAP
12 Petitioner,) (HC)
13 v.) [Petition filed on December
14 M.C. KRAMER, Warden,) 7, 2007]
15 Respondent.) ORDER DENYING PETITION FOR
16) WRIT OF HABEAS CORPUS FILED
17) BY A STATE PRISONER
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1 I. BACKGROUND

2 Petitioner Billy Jerome Lacey is a state prisoner.
3 Proceeding in pro se, he filed a habeas corpus petition
4 pursuant to 28 U.S.C. § 2254 on December 7, 2007, and an
5 amended petition on January 22, 2008. Respondent filed
6 an Answer on April 23, 2008.¹ On January 5, 2009, the
7 action was transferred to this Court pursuant to an Order
8 of Designation of Judge to Serve in Another District
9 within the Ninth Circuit.
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¹ Magistrate Judge Hollows granted Petitioner two extensions of time to file a traverse, but no traverse was ever filed.

1 For the reasons stated below, the Court DENIES the
2 Petition.

3
4 **A. Statement of Facts**

5 **1. The Events of October 13, 2004**

6 Sacramento Police Department officers arrested
7 Petitioner on October 13, 2004 at an "undercover buy-
8 bust" in Oak Park. (RT at 80:23-25, 81:7-9; 148:11-17.)
9 At approximately 10:20 p.m. on that evening, Detective
10 John Jennings, in an unmarked vehicle, approached
11 Petitioner's co-defendant Kerry Duncan, who was walking
12 on foot, and asked him "What's up?" (RT at 83:28.)
13 Duncan responded "Are you looking for it?" (RT at 83:28-
14 84:1.) Based on his experience, Jennings interpreted
15 this to be a reference to mean narcotics. (RT at 84:23-
16 85:1.) Jennings responded "Yes," and pulled over his
17 vehicle. (RT at 85:18-23.)

18
19 Duncan then asked Jennings "what [he] was looking
20 for," and Jennings responded "a \$20 piece of rock," slang
21 for a twenty-dollar piece of rock cocaine. (RT at 85:24-
22 86:6.) Duncan said he would "take [Jennings] to it," got
23 into Jennings's vehicle, and directed Jennings to an area
24 about two blocks away, where his partner was waiting in a
25 van. (RT at 86:7-19.) After driving the two blocks,
26 Jennings handed Duncan a twenty dollar bill, from a
27 series of bills with pre-recorded serial numbers, and
28

1 Duncan exited the vehicle and walked towards a van. (RT
2 at 88:23-26, 90:5-7.)

3
4 Duncan later returned to Jennings's vehicle, said
5 "get ready for an exchange," and dropped a "small,
6 whitish rock wrapped in clear plastic" into Jennings's
7 hand through the open passenger's side window. (RT at
8 93:5-16.) Jennings then indicated to other officers that
9 they should "move in and take the subject in[to]
10 custody." (RT at 93:17-24.)

11
12 Officer Erika Woolson then approached the van,
13 announced her presence, and knocked several times on the
14 driver's side window. (RT at 145:11-20.) She then
15 noticed movement inside the van, and saw a female, later
16 identified as Kelly Stadum. (RT at 145:21-28.) Woolson
17 directed Stadum to exit the vehicle through the driver's
18 side door. (Id.) Stadum did so, and Woolson patted her
19 down for weapons and "passed her on" to Sergeant Susan
20 Fenistra. (RT 146:18-22.) Stadum then told Woolson that
21 her boyfriend was inside the van. (RT at 146:23-27.)
22 Woolson first noticed a male, later identified as
23 Petitioner, standing in the back of the van, and directed
24 him to exit the van. (RT at 147:2-9.) A search of the
25 van led to the discovery of "torn off baggy corners,"
26 which, based on her training and experience, Woolson

1 identified as "the type of packaging used for narcotics."
2 (RT at 148:27-149:6.)
3

4 Petitioner was arrested, and placed in the back of a
5 police car. (RT at 148:11-13, 158:14-16.) Officer
6 Cynthia Stinson later searched Petitioner, and found
7 United States currency in his pants pocket and socks.
8 The serial number on the \$20 bill found in his left sock
9 corresponded with one of those that had been pre-recorded
10 for use in the buy-bust operation that evening. (RT at
11 159:20-160:19.) When asked how he obtained that bill,
12 Petitioner told Stinson that "he had been at different
13 places that day and gotten \$20 bills from those places,"
14 including a store and in Reno. (RT at 161:25-162:6.)
15

16 **2. Jury Selection and the Wheeler Motion**

17 Petitioner challenges the prosecutor's peremptory
18 challenge to a Black juror, "Mr. P."²
19

20 At voir dire, Mr. P. told the court that, while he
21 was in college at Humboldt State University, his roommate
22 and basketball teammate was arrested for marijuana
23 possession and spent time in jail as a result of that
24 arrest. (Voir Dire RT at 15:5-19.) He also indicated
25 that, "out of ten friends [he] grew up with[,] three were
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27 ² Although the parties refer to the juror at issue by
28 name, the Court refers to him only by the initial of his
last name out of respect for his privacy.

1 murdered," and that his brother had been charged with
2 grand theft auto for stealing a stock car. (Voir Dire RT
3 at 36:12-17.) Mr. P. later told counsel for Petitioner's
4 co-defendant that his mother "had a drug problem" while
5 he was growing up, and currently worked in drug abuse
6 prevention. (Voir Dire RT at 52:27-53:3.)

7
8 In the first round of peremptory challenges, the
9 prosecutor exercised three challenges, one of which was
10 exercised against Mr. P. (Voir Dire RT at 74:1-3.)

11
12 Counsel for both Petitioner and his co-defendant
13 later brought a motion pursuant to People v. Wheeler, 22
14 Cal. 3d 258 (1978), ("the Wheeler motion") based on the
15 dismissal of Mr. P. and a second Black juror "within a
16 short period of each other." (RT at 51:4-19.) The trial
17 judge found that the defendants had met their burden of
18 establishing a prima facie case of discrimination, and
19 thus asked the prosecutor to explain why he had exercised
20 peremptory challenges as to the two Black jurors.³

21 _____
22 ³ In evaluating a Wheeler motion, California state
23 courts use the same burden-shifting analysis as that used
24 under Batson v. Kentucky, 476 U.S. 79 (1986). "First,
25 the defendant must make out a prima facie case 'by
26 showing that the totality of the relevant facts gives
27 rise to an inference of discriminatory purpose.' Second,
28 once the defendant has made out a prima facie case, the
'burden shifts to the State to explain adequately the
racial exclusion' by offering permissible race-neutral
justifications for the strikes. Third, '[i]f a
race-neutral explanation is tendered, the trial court
must then decide . . . whether the opponent of the strike

(continued...)

1 The prosecutor provided a lengthy explanation as to
2 why he excused Mr. P.⁴ First, he identified Mr. P.'s
3 dreadlocks, and his own understanding that "dreadlocks
4 are somewhat associated with a Reggae culture which
5 certainly as a culture has pretty liberal views and I
6 think a lot of time promotes drug use, although maybe
7 specifically marijuana not cocaine base." (RT at 53:19-
8 25.) Next, the prosecutor cited Mr. P.'s attendance at
9 Humboldt State University, which he claimed had a
10 reputation as a "kind of a hot-bed for marijuana use," as
11 well as the arrest of his roommate there for the sale of
12 marijuana. (RT at 53:36-54:3.)

13
14 The prosecutor also mentioned several aspects of Mr.
15 P.'s family history which led him to exercise a
16 peremptory challenge. He noted that Mr. P.'s brother's
17 status as a defendant in a vehicle theft case likely led
18 him to "see[] the law work in -- pretty up close." (RT
19 at 54:6-9.) The prosecutor argued that the murders of
20 three of Mr. P.'s childhood friends also served as an
21 "example[] where he's either seen the system work or not
22 work." (RT at 54:10-12.) He also discussed Mr. P.'s

23
24 ³(...continued)
25 has proved purposeful racial discrimination.'" People v.
26 Mills, 48 Cal. 4th 158 (2010), quoting Johnson v.
California, 545 U.S. 162, 168 (2005).

27 ⁴ The prosecutor also provided an explanation for his
28 exercise of a peremptory as to the other Black juror.
(RT at 55:8-56:22.) Petitioner does not challenge the
dismissal of that juror in this Petition.

1 mother and noted that her drug addiction and Mr. P.'s
2 resulting experience and personal knowledge about
3 addiction could have an impact on the case, as he thought
4 "addiction is going to be something that the defense is
5 gonna try and kind of make an issue in this case. (RT at
6 54:13-27.)

7
8 The trial court found that the prosecutor
9 "articulated sufficient basis, variety of reasons why he
10 exercised peremptory challenge as to each of the two
11 jurors," and denied the Wheeler motion. (RT at 58:22-
12 25.)

13 14 **3. Conviction and Sentencing**

15 At the conclusion of a two-day trial, Petitioner's
16 counsel argued that the prosecution had not proven beyond
17 a reasonable doubt that Petitioner was involved with the
18 actual sale of the narcotics. (RT at 200:9-202:5.) The
19 prosecutor responded that, based on "common sense,"
20 Petitioner's possession of the pre-recorded bill could
21 only mean he was involved with the sale, at the least,
22 under a theory of aiding and abetting. (RT at 202:7-
23 209:20.)

24
25 On April 7, 2005, the jury found Petitioner and his
26 co-defendant each guilty of selling cocaine base, in
27 violation of section 11352(a) of the California Health
28

1 and Safety Code. (RT at 242:5-10.) Petitioner waived
2 his right to a jury determination as to the issue of
3 whether he had previously been convicted for a serious
4 felony, and thus qualified for a sentencing enhancement
5 under California Penal Code section 1170.12.⁵ (RT at
6 234:8-235:12.) The trial court heard evidence on this
7 issue, and found that Petitioner's January 24, 1984
8 conviction of first degree burglary, in violation of
9 section 1192.7(c) of the California Penal Code, in the
10 Alameda County Superior Court, constituted a conviction
11 for a serious felony. (RT at 245:23-251:14.)
12

13 The court sentenced Petitioner to a term of eight
14 years: four years for the Health and Safety Code
15 violation, doubled due to the previous serious felony
16 conviction. (RT at 274:5-8.)
17

18 **B. Procedural History**

19 Petitioner, represented by counsel, appealed his
20 conviction to the California Court of Appeal, Third
21 Appellate District, on May 5, 2005, challenging the trial
22 court's ruling on his Wheeler motion. The Court of
23 Appeal affirmed his conviction on December 4, 2006.
24 Petitioner, still represented by counsel, then sought
25

26 ⁵ Cal. Penal Code § 1170.12 is part of California's
27 "Three Strikes Law," which provides for enhanced
28 sentences for defendants who have previously been
convicted of certain felonies.

1 review by the California Supreme Court on January 11,
2 2007. The court denied review without opinion on
3 February 21, 2007.

4
5 While his appeal was pending in the Court of Appeal,
6 Petitioner, acting in pro se, filed a petition for a writ
7 of habeas corpus in that intermediate appellate court on
8 October 4, 2006, alleging ineffective assistance of trial
9 counsel for failure to move for severance. The appellate
10 court summarily denied the petition with a reference to
11 In re Hillery, 202 Cal. App. 2d 293 (1962), on October
12 12, 2006.

13
14 On November 20, 2006, Petitioner filed a pro se
15 petition for a writ of habeas corpus in the California
16 Superior Court, Sacramento County, again on the basis of
17 his trial counsel's failure to move for severance. This
18 petition was denied by written opinion on January 10,
19 2007. On February 8, 2007, Petitioner filed another
20 habeas petition stating the same basis in the Court of
21 Appeal, which was denied summarily on March 8, 2007. On
22 March 21, 2007, Petitioner then filed a habeas petition
23 in the California Supreme Court addressing this same
24 issue, which was denied summarily on July 25, 2007.

25
26 On April 11, 2007, Petitioner filed a pro se habeas
27 petition in the Sacramento County Superior Court,
28

1 alleging the trial court exceeded its jurisdiction and
2 misinterpreted the California Penal Code in sentencing
3 him. The Superior Court denied this petition by written
4 opinion on June 7, 2009. On June 29, 2007, Petitioner,
5 filed another habeas petition in the Court of Appeal on
6 these same grounds. The Court of Appeal summarily denied
7 the petition on July 5, 2007. Finally, Petitioner filed
8 a habeas petition on these grounds in the California
9 Supreme Court on July 23, 2007, which was denied
10 summarily on January 3, 2008.

11 12 **C. Petitioner's Claims**

13 Petitioner filed this petition on December 7, 2007,
14 and asserts the following grounds for federal habeas
15 corpus relief:

16 1. Petitioner was deprived of the effective
17 assistance of counsel because trial counsel failed to
18 seek severance;

19 2. Petitioner was deprived of his right to a jury of
20 his peers, based on the denial of his Wheeler/Batson
21 motion;

22 3. Petitioner was deprived of the effective
23 assistance of counsel by appellate counsel's "failure to
24 investigate and research the trial records for a legal
25 defense on a non-recidivist application";

1 4. Petitioner was deprived of his right to appeal
2 and "increase conduct alleged bey[o]nd the statutory time
3 period limitation" in his 1984 case;

4 5. Petitioner was deprived of his right to due
5 process by the trial court's disregard of the terms of a
6 prior plea agreement;

7 6. "Counsel's duty to inform defendant of all
8 consequence supports petitioner's claim that he was duly
9 informed of 3 years parole and the 1 to 5 years future
10 recidivist enhancement";

11 7. Petitioner was deprived of his right to
12 effective assistance of counsel by trial counsel's
13 "failure to seek specific performance" of the terms of
14 the prior plea agreement;

15 8. Petitioner's right not to be subjected to a Bill
16 of Attainder was violated by actions of the California
17 Legislature;

18 9. The trial court exceeded its jurisdiction by
19 sentencing Petitioner under an invalid statute; and

20 10. Petitioner's right to due process was violated
21 by the trial court's incorrect application of the
22 California Penal Code.

23 24 **II. LEGAL STANDARD**

25 The Antiterrorism and Effective Death Penalty Act of
26 1996 ("AEDPA") governs the Court's review of this
27 Petition, as the Petition was filed after AEDPA's

1 effective date. Under 28 U.S.C. § 2254(a), "a district
2 court shall entertain an application for a writ of habeas
3 corpus in behalf of a person in custody pursuant to the
4 judgment of a State court only on the ground that he is
5 in custody in violation of the Constitution or laws or
6 treaties of the United States."

7
8 When considering a properly exhausted claim under
9 AEDPA, a federal court must defer to a state court's
10 holding unless it "'was contrary to, or involved an
11 unreasonable application of, clearly established Federal
12 law, as determined by the Supreme Court of the United
13 States,' or if the state court decision 'was based on an
14 unreasonable determination of the facts in light of the
15 evidence presented in the State court proceeding.'" Smith v. Curry, 580 F.3d 1071, 1079 (9th Cir. 2009),
16 quoting 28 U.S.C. §§ 2254(d)(1)-(2).
17
18

19 "Clearly established Federal law" is defined as "the
20 governing legal principle or principles set forth by the
21 Supreme Court at the time the state court renders its
22 decision." Curry, quoting Lockyer v. Andrade, 538 U.S.
23 63, 71-72 (2003). "[I]t is not 'an unreasonable
24 application of clearly established Federal law' for a
25 state court to decline to apply a specific legal rule
26 that has not been squarely established by [the Supreme]
27 Court." Knowles v. Mirzayance, --- U.S. ---, 129 S. Ct.
28

1 1411, 1419 (2009). However, "the Supreme Court need not
2 have addressed an identical fact pattern to qualify as
3 clearly established law, as 'even a general standard may
4 be applied in an unreasonable manner.'" Jones v. Ryan,
5 583 F.3d 626, 635 (9th Cir. 2009), quoting Panetti v.
6 Quarterman, 551 U.S. 930, 953 (2007).

8 III. DISCUSSION

9 A. Petitioner's First Claim

10 Petitioner first claims trial counsel's failure to seek
11 severance of Petitioner's trial from that of his co-
12 defendant constituted ineffective assistance of counsel.
13 To establish a constitutional violation based on
14 ineffective assistance of counsel, "a petitioner must
15 show that: (1) his trial counsel's performance 'fell
16 below an objective standard of reasonableness'; and (2)
17 'there is a reasonable probability that, but for
18 counsel's unprofessional errors, the result of the
19 proceeding would have been different.'" Jones, 583 F.3d
20 at 636, quoting Strickland v. Washington, 466 U.S. 668,
21 688, 694 (1984).

22
23 Petitioner contends that counsel had "knowledge of
24 [a] statement made by [his] co-defendant," that should
25 have led counsel to seek severance of the cases for
26 trial. (Pet. at 5.) This claim is set out in more
27 detail in Petitioner's state court petitions, where he
28

1 argued that, had the trials been severed, his co-
2 defendant could have testified that Petitioner did not
3 supply the drugs sold in this case. See, e.g., Ct. of
4 App. Oct. 4, 2006 Pet. at 2-4. The record contains no
5 evidence whatsoever suggesting that Petitioner's co-
6 defendant would have given any such testimony.

7
8 Even if such evidence existed, the Superior Court
9 found that any failure of trial counsel to seek severance
10 was not prejudicial.⁶ The court stated:

11 [I]t is unlikely such testimony would have been
12 deemed credible given the police testimony that
13 an officer gave marked money to the co-defendant
14 who then approached petitioner's van (where the
15 latter was waiting) and shortly thereafter
16 returned with drugs. In addition, a search of
17 the van yielded drug-packaging material along
18 with the marked money.

19 (Jan. 10, 2007 Order, In re Billy Lacey, Case No.
20 06F09802, Sacramento Co. Super. Ct. at 2.) Upon an
21 independent review of the factual record, the Court
22 concludes that the Superior Court's conclusion that any
23 failure to seek severance was not prejudicial was not an
24 unreasonable view of the facts under clearly established
25 federal law, and thus federal habeas relief is not
26 warranted.

27 ⁶ "When reviewing a state court's summary denial of
28 a habeas petition, we 'look through' the summary
disposition to the last reasoned state court decision."
Richter v. Hickman, 578 F.3d 944, 951 (9th Cir. 2009).

1 **B. Petitioner's Second Claim**

2 Petitioner bases his second claim on the trial
3 court's denial of his Wheeler motion, based on the
4 District Attorney's exercise of a peremptory challenge
5 against juror Mr. P. "for having [a] dread-lock hair
6 style." (Pet. at. 5.)

7
8 The Court construes a challenge to a denial of a
9 Wheeler motion, alleging that a peremptory challenge was
10 exercised based on a prohibited characteristic, as one
11 brought under Batson v. Kentucky, 476 U.S. 79 (1986).
12 See, e.g., Gonzalez v. Brown, 585 F.3d 1202, 1210 (9th
13 Cir. 2009); Paulino v. Harrison, 542 F.3d 692, 694 (9th
14 Cir. 2008). "The Batson framework proceeds in three
15 steps. First, a defendant raising a Batson claim must
16 establish a prima facie case of discrimination. The
17 burden of production then shifts to the prosecutor to
18 offer race-neutral reasons for the peremptory strikes.
19 After the prosecutor comes forward with race-neutral
20 reasons, '[t]he trial court then will have the duty to
21 determine if the defendant has established purposeful
22 discrimination.'" Paulino, 542 F.3d at 699, quoting
23 Batson, 476 U.S. at 98.

24
25 Since the trial court determined that Petitioner had
26 indeed established a prima facie case of discrimination,
27 the issue is whether, given the race-neutral reasons
28

1 offered by the prosecutor, Petitioner established
2 purposeful discrimination.

3
4 The last reasoned state court decision addressing
5 Petitioner's Wheeler claim was the Court of Appeal's
6 decision on direct appeal, People v. Duncan, No. C049739,
7 2006 WL 3480375 (Cal. Ct. of App. Dec. 4, 2006). As to
8 Mr. P., that court agreed with Petitioner that, "standing
9 alone, the prosecutor's reference to [Mr. P.'s]
10 dreadlocks may have sent a mixed message that suggested
11 consideration of his race." Evaluating the reference to
12 dreadlocks in a greater context, though, the Court of
13 Appeal found that:

14 the prosecutor's explanation for excusing [Mr.
15 P.] focused on the potential impact of [Mr.
16 P.'s] personal experiences with the drug culture
17 on his view of the prosecution's case. [Mr.
18 P.'s] statements revealed multiple incidents of
19 drug possession and addiction involving people
20 he loved. As voir dire progressed, [Mr. P.]
21 interrupted to volunteer that he had 'a pretty
22 good knowledge just on a lot of things to do
23 with drug addiction and all that stuff. . . . My
24 brother's been in it for 15, 20 years.' On this
25 record, the court could decide the prosecution
26 was legitimately concerned that [Mr. P.'s] life
27 experience, as revealed in voir dire
28 examination, would influence his ability to
assess the case objectively.

2006 WL 3480375, at *6.

24 "To accept a prosecutor's stated nonracial reasons,
25 the court need not agree with them. The question is not
26 whether the stated reason represents a sound strategic
27 judgment, but whether counsel's race-neutral explanation
28

1 for a peremptory challenge should be believed." Kesser
2 v. Cambra, 465 F.3d 351, 359 (9th Cir. 2006) (en banc).
3 Only one United States Supreme Court case has addressed
4 the issue of Batson challenges as related to jurors'
5 grooming or hairstyles. In Purkett v. Elem, 514 U.S.
6 765, 769 (1995), the Court held that the exclusion of a
7 Black male juror because "he had long, unkempt hair, a
8 mustache, and a beard - is race neutral and satisfies the
9 prosecution's step two burden of articulating a
10 nondiscriminatory reason for the strike." In doing so,
11 the Court noted that "The wearing of beards is not a
12 characteristic that is peculiar to any race." Id.,
13 quoting EEOC v. Greyhound Lines, Inc., 635 F.2d 188, 190,
14 n. 3 (3d Cir. 1980).

15
16 Here, the Court acknowledges that the specific
17 hairstyle cited by the prosecutor may indeed be
18 associated with one race more than another. But "[t]he
19 court must evaluate the record and consider each
20 explanation within the context of the trial as a whole,"
21 Kesser, 465 F.3d at 360, and, given the prosecutor's
22 explicit discussion of the association between dreadlocks
23 and drug use, in addition to Mr. P.'s personal
24 experiences with crime, drug use and addiction, the Court
25 of Appeal's determination that the prosecutor "was
26 legitimately concerned that [Mr. P.'s] life experience,
27 as revealed in voir dire examination, would influence his
28 ability to assess the case objectively," was not

1 objectively unreasonable. Thus, the denial of the
2 Wheeler motion does not warrant federal habeas relief.

3 4 **C. Petitioner's Third Claim**

5 In Petitioner's third claim he contends he was denied
6 effective assistance of counsel by his appellate
7 counsel's "failure to investigate and research the trial
8 records for a legal defense on a non-recidivist
9 application." (Pet. at 6.)

10
11 Even construing Petitioner's seven state court habeas
12 petitions liberally, this argument was not "fairly
13 presented" to the state courts, as no petition contained
14 any argument of ineffective assistance by either trial or
15 appellate counsel in relation to the application of the
16 Three Strikes Law to him. Accordingly, Petitioner's
17 third claim is procedurally barred. See Cone v. Bell,
18 129 S. Ct. 1769, 1781 (2009) ("A claim is procedurally
19 barred when it has not been fairly presented to the state
20 courts for their initial consideration.")

21
22 Even if the third claim were not procedurally barred,
23 though, it would fail on the merits. The Strickland
24 standard, discussed above, applies to Petitioner's claim
25 of ineffective assistance of appellate counsel. See
26 Turner v. Calderon, 281 F.3d 851, 872 (9th Cir. 2002).
27 There is no dispute that Petitioner was actually
28 convicted of a serious felony in 1984. See, e.g.,

1 Clerk's Supp. Trans. at 008 (1984 Abstract of Judgment).
2 As described more fully below, Petitioner's contentions
3 that the application of the Three Strikes Law was
4 unlawful are unsupported by statutory and case law, and
5 thus any failure to "investigate" these legal theories
6 was nonprejudicial.

7 8 **D. Petitioner's Fourth Claim**

9 Petitioner's fourth claim is that he was denied his
10 right to appeal his 1984 conviction in the Alameda County
11 Superior Court, as he was not "advised of his right to
12 appeal the information that in itself did not carry a
13 life sentence." (Pet. at 6.) This claim is barred,
14 though. "[O]nce a state conviction is no longer open to
15 direct or collateral attack in its own right because the
16 defendant failed to pursue those remedies while they were
17 available (or because the defendant did so
18 unsuccessfully), the conviction may be regarded as
19 conclusively valid. If that conviction is later used to
20 enhance a criminal sentence, the defendant generally may
21 not challenge the enhanced sentence through a petition
22 under § 2254 on the ground that the prior conviction was
23 unconstitutionally obtained," except in the limited
24 circumstance where "the prior conviction used to enhance
25 the sentence was obtained where there was a failure to
26 appoint counsel in violation of the Sixth Amendment."
27 Lackawanna County Dist. Atty. v. Coss, 532 U.S. 394, 403-
28 04 (2001). Since Petitioner's challenge to the 1984

1 conviction does not fall under this narrow exception, his
2 fourth claim does not assert a valid ground for federal
3 habeas relief.

4
5 **E. Petitioner's Fifth Claim**

6 Next, Petitioner claims that the use of his 1984
7 conviction, which was the result of a plea agreement, to
8 enhance his sentence violated the terms of the 1984 plea
9 agreement, and thus was a violation of his right to due
10 process. Even construing Petitioner's state court
11 petitions liberally, this argument was not "fairly
12 presented" to the state courts prior to this petition,
13 and, as such, is procedurally barred. See Cone, 129 S.
14 Ct. at 1781.

15
16 Even if this claim were not procedurally barred,
17 though, it would fail on the merits. Although Petitioner
18 contends he was told that the collateral consequences of
19 his plea were limited to use in the future as a "1 to 5
20 years," (Pet. Att. at 1), enhancement for a future
21 felony, he has failed to show any evidence in support of
22 this statement. See Calloway v. White, 649 F. Supp. 2d
23 1048, 1055 (N.D. Cal. 2009) (petitioner bears burden to
24 show evidence prosecutor agreed not to use conviction in
25 subsequent proceedings). Moreover, a prosecutor would
26 have had no authority to make such a binding promise as
27 to future prosecutors of other crimes. Miles v. Runnels,

1 No. CIV S-04-1431 LKK EFB P, 2010 WL 489678 at *14 (E.D.
2 Cal. Feb. 5, 2010).

3
4 The court that accepted Petitioner's plea in 1984
5 also had no duty to inform Petitioner of the possibility
6 that his conviction could be used against him in the
7 future. "When accepting a defendant's plea, courts must
8 inform defendants of only direct, rather than collateral,
9 consequences of a guilty plea." Garcia v. Felker, No. CV
10 06-7732-RSWL(CT), 2009 WL 2776664, at *8 (C.D. Cal. Aug.
11 26, 2009), citing Torrey v. Estelle, 842 F.2d 234, 235
12 (9th Cir. 1988). The possibility that a defendant will
13 be convicted of another offense in the future and receive
14 an enhanced sentence based on the current conviction is a
15 collateral, not direct, consequence of a plea. Id.,
16 citing United States v. Brownlie, 915 F.2d 527, 528 (9th
17 Cir. 1990).

18
19 Petitioner thus has failed to establish an
20 entitlement to habeas relief based on his fifth claim.

21
22 **F. Petitioner's Sixth Claim**

23 Petitioner's sixth claim is that "Counsel's duty to
24 inform defendant of all consequence supports
25 petitioner[']s claim that he was duly informed of 3 years
26 parole and the 1 to 5 future recidivist enhancement."
27 (Pet. Att. at 1.) This does not appear to be a free-
28 standing claim of constitutional violation, but merely

1 additional support for his argument that the
2 consideration of his prior plea in his sentence was
3 unlawful. Accordingly, Petitioner's sixth claim fails to
4 justify habeas relief.

5 6 **G. Petitioner's Seventh Claim**

7 Petitioner contends his trial counsel's performance
8 was constitutionally deficient because he failed to seek
9 "specific performance" of the terms of the 1984 plea
10 agreement. This claim was not fairly presented to the
11 state courts in any of Petitioner's state court
12 petitions, and thus is barred. Casey v. Moore, 386 F.3d
13 896, 911 (9th Cir. 2004). Moreover, as explained above,
14 there is no indication that the 1984 plea agreement
15 actually was violated by the use of the 1984 conviction
16 in enhancing Petitioner's sentence, and there was thus no
17 prejudice under Strickland. Accordingly, this claim
18 provides no basis for habeas relief.

19 20 **H. Petitioner's Eighth Claim**

21 According to Petitioner, his constitutional rights
22 were violated when he received a "double sentence" by the
23 imposition of a sentencing enhancement under the Three
24 Strikes Law. Petitioner argues that this sentence was an
25 unlawful bill of attainder. This claim does not appear
26 to have been presented to the state court, and is thus
27 deemed waived. Even if Petitioner had not waived this
28 claim, though, the Three Strikes Law "is not a bill of

1 attainer because it does not single anyone out." Wolfe
2 v. George, 486 F.3d 1120, 1127 (9th Cir. 2007).

3
4 To the extent Petitioner's claim can be construed as
5 a challenge to the Three Strikes Law under the
6 Constitution's prohibitions of double jeopardy and ex
7 post facto punishment, such a claim is without merit.
8 See Simpson v. Thomas, 528 F.3d 685, 689-90 (9th Cir.
9 2008) (rejecting double jeopardy challenge to Three
10 Strikes Law); United States v. Kaluna, 192 F.3d 1188,
11 1199 (9th Cir. 1999) (three strikes law does not violate
12 ex post facto clause so long as statute was enacted at
13 the time the present offense was committed).
14 Petitioner's eighth claim thus fails to establish an
15 entitlement to habeas relief.

16
17 **I. Petitioner's Ninth Claim**

18 Petitioner's ninth claim is that the trial court
19 "acted in excess of its jurisdiction by imposing a
20 sentence on petitioner under an invalid statute," by
21 "fail[ing] to look first to the words of the statute."
22 (Pet. Att. at 3.) Petitioner does not specify what
23 statute he is challenging, and only states that the
24 "trial court failed to look first to the words of the
25 statute before he sentence[d] prisoner to 4 years double
26 plus 85%." (Id.) This claim "is too vague and
27 conclusory for the Court to determine the exact nature of
28 the claim. Petitioner must state his claim with

1 sufficient specificity." Courtois v. United States, No.
2 1:06-cv-00182-OWW-TAG HC, 2007 WL 4463230 (E.D. Cal. Dec.
3 17, 2007).

4
5 To the extent Petitioner seeks to challenge the trial
6 court's interpretation or application of a state
7 sentencing law, "the application of state sentencing law
8 does not raise a federal constitutional issue" in and of
9 itself. Bowlin v. Chrones, No. CV F 06-1361 LJO DLB HC,
10 2008 WL 3540617, at *7 (E.D. Cal. Aug. 13, 2008). See
11 also Beaty v. Stewart, 303 F.3d 975, 986 (9th Cir. 2002).
12 Petitioner's ninth claim therefore does not justify
13 federal habeas relief.

14
15 **J. Petitioner's Tenth Claim**

16 In his tenth claim, Petitioner argues the trial court
17 "erroneously imposed a sentence in excess of statutory
18 law and under a generic statute," by misinterpreting Cal.
19 Penal Code section 2933.1, which applies to the
20 calculation of worktime credits. (Pet. Att. at 4.)

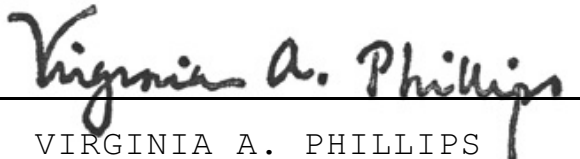
21
22 Petitioner's claim regarding the application of
23 worktime credits was considered and rejected by the
24 Superior Court in its June 7, 2007 written opinion, both
25 on the merits and because the court deemed Petitioner's
26 objections to sentencing errors waived based on his
27 failure to raise them at the time of sentencing, in his
28 appeal, or in his previous habeas petition. A state

1 court's finding that a petitioner waived a claim bars
2 consideration of the merits of that claim on federal
3 habeas review. Stewart v. Smith, 536 U.S. 856, 860-61
4 (2002). Therefore, Petitioner's tenth claim fails to
5 identify a viable ground for habeas relief.

6
7 **IV. CONCLUSION**

8 For the foregoing reasons, the Petition for Writ of
9 Habeas Corpus is DENIED.

10
11 Dated: April 12, 2010


12 VIRGINIA A. PHILLIPS
13 United States District Judge
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