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

KANWALJIT SINGH HUNDAL,

Petitioner,

No. 2: 12-cv-0352 MCE KJN P

vs.

J. TIM OCHOA, et al.,

Respondents.

FINDINGS AND RECOMMENDATIONS

_____ /

Petitioner is a state prisoner, proceeding without counsel, with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner alleges that he is entitled to pre-sentence credits pursuant to California Penal Code § 4019.

Pending before the court is respondent’s motion to dismiss on grounds that petitioner fails to allege a violation of federal law. For the following reasons, respondent’s motion should be granted.

A writ of habeas corpus is available under 28 U.S.C. § 2254(a) only on the basis of some transgression of federal law binding on the state courts. Middleton v. Cupp, 768 F.2d 1083, 1085 (9th Cir. 1985); Gutierrez v. Griggs, 695 F.2d 1195, 1197 (9th Cir. 1983). It is unavailable for alleged error in the interpretation or application of state law. Middleton v. Cupp, 768 F.2d at 1085; see also Lincoln v. Sunn, 807 F.2d 805, 814 (9th Cir. 1987); Givens v.

1 Housewright, 786 F.2d 1378, 1381 (9th Cir. 1986). Habeas corpus cannot be used to try state
2 issues de novo. Milton v. Wainwright, 407 U.S. 371, 377 (1972).

3 The background to petitioner’s claim is as follows. In 2007, petitioner was
4 convicted of violating California Penal Code § 288(a) and sentenced to 6 years imprisonment.
5 (Dkt. No. 1 at 1.) Since 1976, California Penal Code § 4019 has offered prisoners in local
6 custody the opportunity to earn “conduct credit” against their sentences for good behavior.
7 People v. Brown, 54 Cal.4th 314, 317 (June 18, 2012). For eight months during 2010, a
8 now-superseded version § 4019 that was enacted during a state fiscal emergency temporarily
9 increased the rate at which local prisoners could earn conduct credits. Id. at 317-18. In the
10 instant action, petitioner argues that he is entitled to conduct credits under the now-superseded
11 version of § 4019.

12 On June 12, 2012, the California Supreme Court decided that the now-superseded
13 version of § 4019 does not apply retroactively to prisoners who served time in local custody
14 before January 25, 2010, i.e., the date the on which the now-superseded version of § 4019
15 became effective. People v. Brown, 54 Cal.4th 314, 318 (June 12, 2012). The California
16 Supreme Court held that the now-superseded version of § 4019 applies prospectively to qualified
17 prisoners in local custody on the statute’s operative date. Id. Because petitioner was not in local
18 custody on the statute’s operative date, he is not entitled to credits pursuant to the now-
19 superseded version of § 4019.

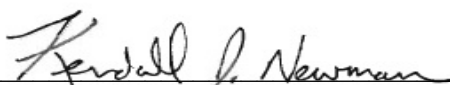
20 Petitioner’s claim is based on an alleged violation of state law. For this reason,
21 respondent’s motion to dismiss should be granted. In any event, as discussed above, pursuant to
22 the California Supreme Court’s recent decision in People v. Brown, petitioner is not entitled to
23 the credits sought under state law.¹

24
25 ¹ This court is bound to accept the California Supreme Court’s finding that the now-
26 superseded version of § 4019 does not apply retroactively unless that interpretation is “untenable
or amounts to a subterfuge to avoid federal review of a constitutional violation.” See Oxborrow
v. Eikenbery, 877 F.2d 1395 , 1399 (9th Cir. 1989). The California Supreme Court’s decision in

1 IT IS HEREBY RECOMMENDED that respondent's motion to dismiss (Dkt. No.
2 9) be granted.

3 These findings and recommendations are submitted to the United States District
4 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-
5 one days after being served with these findings and recommendations, any party may file written
6 objections with the court and serve a copy on all parties. Such a document should be captioned
7 "Objections to Magistrate Judge's Findings and Recommendations." If petitioner files
8 objections, he shall also address whether a certificate of appealability should issue and, if so, why
9 and as to which issues. A certificate of appealability may issue under 28 U.S.C. § 2253 "only if
10 the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. §
11 2253(c)(3). Any response to the objections shall be filed and served within fourteen days after
12 service of the objections. The parties are advised that failure to file objections within the
13 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
14 F.2d 1153 (9th Cir. 1991).

15 DATED: August 2, 2012

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17 
18 KENDALL J. NEWMAN
19 UNITED STATES MAGISTRATE JUDGE

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26 People v. Brown is neither untenable nor a subterfuge to avoid federal review.