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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD BROWN,
Petitioner,
v.
ERIC ARNOLD, Warden,
Respondent.

No. 2:14-cv-2922 MCE AC

FINDINGS AND RECOMMENDATIONS

Petitioner is a California state prisoner proceeding pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. By operation of the “prison mailbox rule,” the petition was filed on December 3, 2014.¹ See ECF No. 1 at 12 (proof of service). Respondent has answered (ECF No. 14), and petitioner submitted a reply (ECF No. 15). For the reasons set forth below, the undersigned recommends that the petition be denied.

I. BACKGROUND

On April 25, 2001, petitioner pled guilty to four counts of murder. The charges arose from the stabbing deaths of petitioner’s father, grandmother, girlfriend, and his girlfriend’s three

¹ Pursuant to the prison mailbox rule, a document is deemed served or filed on the date a prisoner signs the document and gives it to prison officials for mailing. See Houston v. Lack, 487 U.S. 266 (1988) (establishing prison mailbox rule); Lewis v. Mitchell, 173 F. Supp. 2d 1057, 1059 n. 1 (C.D. Cal. 2001) (delivery for purposes of constructive filing under the prison mailbox rule is presumed to be on the date of signing of the petition, absent evidence to the contrary).

1 year old son.² Judgment of conviction was entered on July 16, 2001, and petitioner was
2 sentenced to four concurrent terms of life imprisonment without parole.

3 Petitioner did not appeal.

4 On June 22, 2014, petitioner filed a Petition for Writ of Error in the California Court of
5 Appeal, contending that the Board of Parole Hearings (BPH) and California Department of
6 Corrections and Rehabilitation (CDCR) were “misapplying” his sentence. The petition was
7 denied without comment on July 3, 2014. ECF No. 14 at 38.

8 On August 8, 2014, petitioner filed a petition for writ of habeas corpus in the California
9 Supreme Court, presenting the same claim. The petition was denied without comment or citation
10 on October 15, 2014. ECF No. 14 at 49.

11 II. PETITIONER’S ALLEGATIONS

12 The instant petition contains a single claim. Petitioner contends that he is wrongly being
13 denied the chance for parole, and that his rights have been violated by respondent’s failure to set
14 release dates. In support of this claim, the petition alleges in full as follows:

15 Petitioner [has] been sentenced to a term applied under I.S.L. yet
16 Petitioner’s sentence is governed by the new provisions of the
17 D.S.L. Adopted in 1977. The I.S.L. is still being applied illegally
18 due to the Standard being repealed. However, the circumstances of
19 my sentence places me in the same situation of being governed by
20 two different sentencing standards, i.e., “I.S.L.” and “D.S.L.”
21 Which this court “Supreme Court” states can’t be done without
22 establishing release dates up under Both Standards. The allowance
23 of the use of a[] Repealed Standard is an Unlawful Application to a
24 sentence that should be determined. The Uniform Sentencing Act
25 (1977), Chatman served 16 yrs. and was released. I have 14 yrs.
26 and still in custody, and still have not been given a date.

27 ECF No. 1 at 6.

28 Although petitioner’s legal theory is somewhat unclear, he plainly believes that his life-
without-parole sentence is unlawful because imposed after the 1977 passage of the Determinate

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2 The victims all lived in the same home with petitioner. Petitioner’s girlfriend also had two babies, 21-months and four months old at the time of the murders. They were unharmed.

1 Sentencing Act.³

2 III. RESPONDENT'S ANSWER

3 Respondent contends that this court must dismiss the petition on grounds that (1) it fails to
4 state a claim that is cognizable in federal habeas, and (2) it is barred by the statute of limitations.
5 ECF No. 14 at 5, 8-11. The answer also asserts that the claims should be denied as unexhausted,
6 id. at 5, but presents no argument on that issue.

7 IV. SCOPE OF FEDERAL HABEAS

8 Petitioner's sole claim is not cognizable in federal habeas. Federal habeas relief is
9 available to state prisoners only to correct violations of the United States Constitution, federal
10 laws, or treaties of the United States. 28 U.S.C. § 2254(a). Alleged errors in the application of
11 state law are not cognizable. Lewis v. Jeffers, 497 U.S. 764, 780 (1990) ("federal habeas corpus
12 relief does not lie for errors of state law"); Middleton v. Cupp, 768 F.2d 1083, 1085 (9th Cir.
13 1985) (federal habeas relief is "unavailable for alleged error in the interpretation or application of
14 state law"). Accordingly, sentencing challenges that involve the application of state law provide
15 no basis for federal habeas relief and cannot be entertained by a federal habeas court. See
16 Hubbart v. Knapp, 379 F.3d 773, 779-80 (9th Cir. 2004); Souch v. Schaivo, 289 F.3d 616 (9th
17 Cir. 2002); Cacoperdo v. Demosthenes, 37 F.3d 504, 507 (9th Cir. 1994); Miller v. Vasquez, 868

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19 ³ Respondent provides the following background information:

20 "Before July 1, 1977, California law provided for indeterminate
21 sentencing. Under that sentencing scheme, penal statutes specified
22 a minimum and a maximum sentence for felonies, often ranging
23 broadly from as little as one year in prison to imprisonment for
24 life." People v. Felix, 22 Cal. 4th 651, 654-655 (2000). On July 1,
25 1977, the state legislature enacted a new law, the Determinate
26 Sentencing Act. Id. Under the Determinate Sentencing Act, most
27 felonies are punishable by three possible terms of imprisonment: a
28 lower, a middle, or an upper term. Id. Other crimes remain
punishable by terms of some number of years to life, or life
sentences – with or without the possibility of parole. Id. "Thus,
two different sentencing schemes coexist today: one determinate,
the other indeterminate." Id. Indeterminate sentences, such as life
without parole, were not abolished by California's 1977 creation of
determinate sentencing.

ECF No. 14 at 9.

1 F.2d 1116, 1118-19 (9th Cir. 1989).

2 The instant petition seeks relief for an alleged misapplication of California’s indeterminate
3 and determinate sentencing regimes. Even if petitioner had invoked his federal due process rights,
4 which he did not, the allegations of the petition would not support a viable claim. See Langford
5 v. Day, 110 F.3d 1380, 1389 (9th Cir. 1996) (a petitioner may not transform a state-law issue into
6 a federal one merely by asserting a violation of due process).⁴

7 To the extent petitioner’s claim can be construed as a challenge to the denial of parole,
8 this court lacks jurisdiction. See Swarthout v. Cooke, 562 U.S. 216, 221 (2011). Moreover, it is
9 well established that an inmate has no protected liberty interest in receiving a parole release date.
10 See Greenholtz v. Nebraska Penal Inmates, 442 U.S. 1, 7 (1979) (“There is no constitutional or
11 inherent right of a convicted person to be conditionally released before the expiration of a valid
12 sentence.”).

13 Because petitioner’s only claim presents no federal question, it is not cognizable and
14 cannot be cured by amendment. Accordingly, the petition should be denied.

15 V. TIMELINESS

16 Respondent also contends that the petition is untimely, as it was filed long after finality of
17 petitioner’s un-appealed 2001 conviction. This argument is almost certainly correct, as the
18 applicable statute of limitations is one year, 28 U.S.C. § 2244(d)(1)(a), and petitioner filed no
19 collateral challenge within one year of his conviction that might have tolled the limitations period
20 pursuant to § 2254(d)(2). The traverse does not respond directly to respondent’s untimeliness
21 argument, but petitioner does assert in conclusory fashion that state remedies were not available
22 to him. ECF No. 15 at 3-4. Because the petition states no cognizable claim, there is no need for
23 the court to consider whether petitioner’s references to the availability of state remedies, if further
24 developed, could affect the timeliness analysis.

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27 ⁴ Petitioner does argue for the first time in his traverse that his sentence violates due process. His
28 conclusory assertions of a constitutional violation, ECF No. 15 at 4-5, fail to identify any way in
which his sentence violates due process standards.

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CONCLUSION

For the reasons set forth above, IT IS HEREBY RECOMMENDED that:

1. The petition for writ of habeas corpus be DENIED;
2. The court decline to issue the certificate of appealability referenced in 28 U.S.C. § 2253.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the objections shall be filed and served within fourteen days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: August 9, 2017



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE