

1 II. RELEVANT FACTS

2 In the first amended petition, petitioner states the following: On November 6, 2012, he
3 was convicted of conspiracy to bring a controlled substance into prison in violation of California
4 Penal Code §§ 182(a)(1) and 4573. (See generally ECF No. 17 at 1). As a result, he was
5 sentenced to thirty-two months in prison, pursuant to California Penal Code §§ 1170.12(a)-(d)
6 and 667(b)-(i). (See ECF No. 17 at 6).

7 On September 28, 2014, California’s Fair Sentencing Act was approved by Governor
8 Brown and filed with the Secretary of State. (See ECF No. 17 at 8). The Act, petitioner argues,
9 prohibits a grant of probation or the suspension of sentence of someone who was convicted of
10 either possessing for sale or of selling a substance containing 28.5 grams of a controlled
11 substance. (See ECF No. 17 at 8). However, because petitioner was convicted of violating
12 Section 4573 with only 24.09 grams of heroin – which is less than the Act’s new 28.5-gram level
13 cap – he contends that he is eligible for either a grant of probation or for a suspension of his
14 sentence. (See ECF No. 17 at 8).

15 III. LEGAL STANDARDS

16 Rule 4 of the Habeas Rules Governing Section 2254 Cases requires the court to
17 summarily dismiss a habeas petition “[i]f it plainly appears from the petition and any attached
18 exhibits that the petitioner is not entitled to relief in the district court.” A person in custody
19 pursuant to the judgment of a state court can obtain a federal writ of habeas corpus “only on the
20 ground that he is in custody in violation of the Constitution or laws or treaties of the United
21 States.” 28 U.S.C. § 2254(a). Federal habeas relief is not available for alleged errors of state law.
22 28 U.S.C. § 2254(a); Middleton v. Cupp, 768 F.2d 1083, 1085 (9th Cir. 1985); Lewis v. Jeffers,
23 497 U.S. 764, 780 (1990).

24 It is not the province of a federal habeas court to re-examine state-court determinations on
25 state-law questions. Estelle v. McGuire, 502 U.S. 62, 68 (1991). Absent a showing of
26 fundamental unfairness, a state court’s misapplication of its own sentencing laws does not justify
27 federal habeas relief. Christian v. Rhode, 41 F.3d 461, 469 (9th Cir. 1994).

28

1 **III. DISCUSSION**

2 Petitioner contends that under California’s Fair Sentencing Act, his sentence is
3 unconstitutional, and that as a result, he should be resentenced. (ECF No. 17 at 6-8). It appears
4 that he has appealed his sentence, that he has made these arguments in the state appellate courts,
5 and that all of his state appeals have been denied. (See generally ECF No. 17 at 2) (petitioner’s
6 state appellate history). Although petitioner uses the word “unconstitutional” in the instant
7 petition, the use of that word alone does not transport his claim, which solely questions the
8 propriety of the application of state law, into the realm of claims properly subject to federal
9 habeas review. See, e.g., Hill v. Lizzaraga, No. 15-cv-6132 BRO AJW, 2015 WL 8923107, at *2
10 (C.D. Cal. Nov. 2, 2015) (addressing petitioner’s claims related to state application of
11 California’s Fair Sentencing Act and finding state sentencing issues generally not cognizable in
12 federal habeas action). Furthermore, petitioner has not shown that the state court misapplied its
13 own sentencing laws and that any application of the law was fundamentally unfair. See generally
14 Christian, 42 F.3d at 469.


15 In sum, the petition is not properly before this court, and it fails to state a claim upon
16 which relief may be granted. See 28 U.S.C. § 1915(e)(2)(B)(ii). When it is clear that a petition
17 lacks merit, the court may dismiss it. See O’Bremski v. Maass, 915 F.2d 418, 420 (9th Cir.
18 1990), cert. denied, 48 U.S. 1096 (1991) (stating Rule 4 of Rules Governing Section 2254
19 explicitly allows district court to summarily dismiss petition on merits when no claim for relief
20 stated) (citation omitted).

21 Accordingly, **IT IS HEREBY RECOMMENDED** that this action be summarily dismissed
22 for failure to state a claim upon which relief may be granted. See 28 U.S.C. § 1915(e)(2)(B)(ii).

23 These findings and recommendations are submitted to the United States District Judge
24 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
25 after being served with these findings and recommendations, petitioner may file written
26 objections with the court. Such a document should be captioned “Objections to Magistrate
27 Judge’s Findings and Recommendations.” Failure to file objections within the specified time
28 may waive the right to appeal the District Court’s order. Turner v. Duncan, 158 F.3d 449, 455

1 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991). In his objections petitioner may
2 address whether a certificate of appealability should issue in the event he files an appeal of the
3 judgment in this case. See 28 U.S.C. § 2253(c)(2).

4 Dated: December 3, 2018

5
6 
7 DEBORAH BARNES
8 UNITED STATES MAGISTRATE JUDGE

9 DLB:13
10 DB/ORDERS/ORDERS.PRISONER.HABEAS/whee1629.scrn.fap.f&r
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28