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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES EARL HALL,
Petitioner,
v.
ROBERT FOX,
Respondent.

No. 2:16-cv-2628 DB P

ORDER

Petitioner is a state prisoner proceeding pro se with a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Before the court is petitioner’s petition, motion to proceed in forma pauperis (“IFP”), and motion to appoint counsel. (ECF Nos. 1; 2; 6.) For the reasons set for the below, this court will grant petitioner’s request to proceed IFP, dismiss the petition, provide petitioner an opportunity to amend the petition, and deny petitioner’s motion to appoint counsel.

BACKGROUND

Petitioner initiated this action in November of 2016 by filing a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (ECF No. 1.) Therein, petitioner challenges his 1998 conviction and sentence rendered by the Placer County Superior Court.

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1 Rule 2(c) of the Rules Governing § 2254 Cases requires every habeas petition to (1)
2 specify all the grounds for relief available to the petitioner; (2) state the facts supporting each
3 ground; and (3) state the relief requested. Although, as stated above, pro se petitions receive less
4 scrutiny for precision than those drafted by lawyers, a petitioner must give fair notice of his
5 claims by stating the factual and legal elements of each claim in a short, plain, and succinct
6 manner. See Mayle v. Felix, 545 U.S. 644, 648 (2005) (“In ordinary civil proceedings ... Rule 8
7 of the Federal Rules of Civil Procedure requires only 'a short and plain statement[.] ... Rule 2(c)
8 of the Rules Governing Habeas Corpus Cases requires a more detailed statement.”) Allegations
9 in a petition that are vague, conclusory, or palpably incredible, and that are unsupported by a
10 statement of specific facts, are insufficient to warrant relief and are subject to summary dismissal.
11 Jones v. Gomez, 66 F.3d 199, 204–05 (9th Cir.1995); James v. Borg, 24 F.3d 20, 26 (9th
12 Cir.1994).

13 **II. Discussion**

14 Petitioner claims two grounds for habeas relief in his petition: (1) That two prior
15 convictions arising out of a single act do not constitute two strikes under the three strikes law; and
16 (2) That the great bodily injury sentence enhancements as to counts 2 and 7 were applied
17 unlawfully. (ECF No. 1.)

18 The Antiterrorism and Effective Death Penalty Act (“AEDPA”) imposes “a highly
19 deferential standard for evaluating state-court rulings,” requiring “that state-court decisions be
20 given the benefit of the doubt.” Woodford v. Visciotti, 537 U.S. 19, 24 (2002) (quoting Lindh v.
21 Murphy, 521 U.S. 320, 333 n. 7 (1997)). Section 2241(c) provides that habeas corpus shall not
22 extend to a prisoner unless he is “in custody in violation of the Constitution.” 28 U.S.C. §
23 2254(a) states, “[A] district court shall entertain an application for a writ of habeas corpus in
24 behalf of a person in custody pursuant to a judgment of a State court only on the ground that he is
25 in custody in violation of the Constitution or laws or treaties of the United States.” See also Rule
26 1 to the Rules Governing Section 2254 Cases in the United States District Court. “[F]ederal
27 habeas corpus relief does not lie for errors of state law.” Estelle v. McGuire, 502 U.S. 62, 67

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1 (1991) (citations omitted). “[E]rrors of state law do not concern us unless they rise to the level of
2 a constitutional violation.” Oxborrow v. Eikenberry, 877 F.2d 1395, 1400 (9th Cir. 1989).

3 The Supreme Court has held that “the essence of habeas corpus is an attack by a person in
4 custody upon the legality of that custody.” Preiser v. Rodriguez, 411 U.S. 475, 484 (1973). To
5 succeed in a petition pursuant to Section 2254, a petitioner must demonstrate that the adjudication
6 of his claim in state court “resulted in a decision that was contrary to, or involved an unreasonable
7 application of, clearly established Federal law, as determined by the Supreme Court of the United
8 States; or resulted in a decision that was based on an unreasonable determination of the facts in
9 light of the evidence presented in the State court proceeding.” 28 U.S.C. § 2254(d)(1), (2).
10 Petitioner may only seek habeas relief if the nature or duration of his imprisonment violates
11 federal constitutional provisions.

12 **A. Ground One**

13 As stated above, ground one of the petition asserts that the sentencing court erred in
14 construing two prior convictions arising out of a single act to constitute two strikes under the
15 three strikes law. (ECF No. 1 at 7-12.) A federal court can grant habeas relief only if the
16 petitioner has demonstrated that the state court violated the United States constitution or federal
17 law. Swarthout v. Cooke, 562 U.S. 216, 219 (2011). “[F]ederal habeas corpus relief does not lie
18 for errors of state law.” McGuire, 502 U.S. at 67 (quoting Lewis v. Jeffers, 497 U.S. 764, 780
19 (1990)).

20 Because this ground only alleges a violation of California state sentencing law, this claim
21 is not recognized in a federal habeas proceeding. Accordingly, this claim is dismissed. However,
22 petitioner may file an amended petition that attempts to challenge a decision that is “contrary to,
23 or involved an unreasonable application of, clearly established **Federal** law[.]” 28 U.S.C. §
24 2254(d)(1) (emphasis supplied).

25 **B. Ground Two**

26 As with the first ground, petitioner’s second claim for relief challenges the application of
27 California sentencing law. Specifically, petitioner challenges the sentencing court’s application
28 of the “great bodily injury” enhancement, arguing that “[t]he state Court criteria were

1 improper[ly] applied, and [the trial court] made [an] incorrect legal assumption in Petitioner’s
2 case.” (ECF No. 1 at 13-18.) This challenge to petitioner’s sentence thus sounds solely in state
3 sentencing law and does not attempt to demonstrate that the state court violated the United States
4 constitution or federal law. As the explained above, a state court's violation of the state penal
5 code does not constitute a cognizable claim in federal habeas review. See Swarthout, 562 U.S. at
6 219; McGuire, 502 U.S. at 67. Accordingly, ground two would not state a claim cognizable in
7 federal habeas proceedings.

8 For these reasons, this claim is dismissed. However, petitioner may file an amended
9 petition that attempts to challenge a decision that is “contrary to, or involved an unreasonable
10 application of, clearly established **Federal** law[.]” 28 U.S.C. § 2254(d)(1) (emphasis supplied).

11 **MOTION TO APPOINT COUNSEL**

12 Petitioner has requested the appointment of counsel. (ECF No. 6.) There currently exists
13 no absolute right to appointment of counsel in habeas proceedings. See Nevius v. Sumner, 105
14 F.3d 453, 460 (9th Cir. 1996). However, 18 U.S.C. § 3006A authorizes the appointment of
15 counsel at any stage of the case “if the interests of justice so require.” See Rule 8(c), Fed. R.
16 Governing § 2254 Cases. In the present case, the court does not find that the interests of justice
17 would be served by the appointment of counsel at the present time. While the court has found the
18 petition to not state cognizable federal claims, the undersigned finds that the claims stated are
19 articulated clearly and presented with substantial underlying support in case law.

20 Accordingly, petitioner’s request for appointment of counsel (ECF No. 6) is denied
21 without prejudice to a renewal of the motion at a later stage of the proceedings.

22 **CONCLUSION**

23 For the foregoing reasons, IT IS HEREBY ORDERED as follows:

- 24 1. Petitioner’s application to proceed IFP (ECF No. 2) is granted.
- 25 2. Petitioner’s motion to appoint counsel (ECF No. 6) is denied.
- 26 3. Petitioner’s petition (ECF No. 1) is dismissed with leave to amend.
- 27 4. Within thirty days of the date of this order, petitioner shall file an amended petition.

28 The amended petition shall include the case number assigned to this action and shall


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be titled "First Amended Petition." Petitioner is warned that the court cannot refer to his prior petition to make his First Amended Petition complete. Petitioner must include all claims for habeas corpus relief in his first amended petition.

5. The Clerk of the Court is directed to send petitioner a copy of the form used in this district for pursuing a writ of habeas corpus under 28 U.S.C. § 2254.

6. Petitioner is warned that his failure to comply with this order may result in dismissal of this action.

Dated: June 22, 2017



DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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