



1 Under Rule 4 of the Rules Governing Section 2254 Cases, this court is required to conduct  
2 a preliminary review of all petitions for writ of habeas corpus filed by state prisoners. Pursuant to  
3 Rule 4, this court must summarily dismiss a petition if it “plainly appears from the petition and  
4 any attached exhibits that the petitioner is not entitled to relief in the district court.”

5 Review of the instant petition demonstrates that petitioner is challenging a 2009  
6 conviction for the possession and trafficking of marijuana, on the ground that petitioner’s Fourth  
7 Amendment rights were violated by the warrantless search of his car. See ECF No. 1. Fourth  
8 Amendment claims are not cognizable on habeas corpus if petitioner had a “full and fair  
9 opportunity” to litigate his claim in the state courts. See Stone v Powell, 428 U.S. 465 (1976);  
10 Newman v. Wengler, 790 F.3d 876 (9th Cir. 2015). “The relevant inquiry is whether petitioner  
11 had the opportunity to litigate his claim, not whether he did in fact do so or even whether the  
12 claim was correctly decided.” Newman, 790 F.3d at 880 (quoting Ortiz-Sandoval v. Gomez, 81  
13 F.3d 891, 899 (9th Cir. 1996)).

14 In the present case, petitioner pled *nolo contendere* to the charges against him. Prior to  
15 entry of his plea, petitioner had a full and fair opportunity under California Penal Code § 1538.5  
16 to move to suppress the evidence against him on Fourth Amendment grounds.

17 Moreover, under California law, a plea of no contest is equivalent to a guilty plea. See  
18 Cal. Penal Code § 1016; People v. Mendez (1999) 19 Cal. 4th 1084, 1094-95. “When a criminal  
19 defendant has solemnly admitted in open court that he is in fact guilty of the offense with which  
20 he is charged, he may not thereafter raise independent claims relating to the deprivation of  
21 constitutional rights that occurred prior to the entry of the guilty plea.” Tollett v. Henderson, 411  
22 U.S. 258, 267 (1973). “The focus of federal habeas inquiry is the nature of the advice and the  
23 voluntariness of the plea, not the existence as such of an antecedent constitutional infirmity.” Id.  
24 at 266. Therefore, “[p]etitioner’s *nolo contendere* plea precludes him from challenging alleged

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26 appeal unless he was “under imminent danger of serious physical injury” when he filed his  
27 complaint, 28 U.S.C. § 1915(g), “the *forma pauperis* provisions of the PLRA relating to prisoner  
28 civil actions and appeals do not apply to habeas corpus proceedings.” Naddi v. Hill, 106 F.3d  
275, 277 (9th Cir. 1997) (per curiam). Hence, petitioner may proceed in *forma pauperis* in this  
action.

1 constitutional violations that occurred prior to the entry of that plea.” Ortberg v. Moody, 961  
2 F.2d 135, 137-38 (9th Cir. 1992).

3 Finally, the California Supreme Court’s November 9, 2016 denial of petitioner’s state  
4 habeas petition demonstrates that it is procedurally barred. See ECF No. 1 at 7.

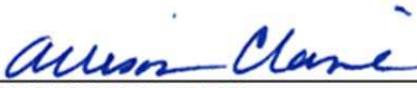
5 For these several reasons, the undersigned finds that the instant petition fails to state a  
6 cognizable claim for habeas relief and will be dismissed on that basis. See Rule 4, Rules Governing  
7 Section 2254 Cases.

8 Accordingly, IT IS HEREBY ORDERED that:

9 1. Petitioner’s request to proceed in forma pauperis, ECF No. 2, is granted; nevertheless,  
10 the \$5.00 filing fee is waived.

11 2. This case is dismissed without prejudice; the Clerk of Court is directed to close this  
12 case.

13 DATED: March 17, 2017

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15 ALLISON CLAIRE  
16 UNITED STATES MAGISTRATE JUDGE  
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