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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT RAMESES,  
Petitioner,  
v.  
J. LIZARRAGA, Warden,  
Respondent.

No. 2:17-cv-2275 MCE AC P

ORDER and  
FINDINGS AND RECOMMENDATIONS

I. Introduction

Petitioner is a state prisoner proceeding pro se with this habeas corpus action filed pursuant to 28 U.S.C. § 2254. For the reasons that follow, the undersigned recommends that this action be dismissed for lack of federal habeas jurisdiction.

II. In Forma Pauperis Application

Examination of the in forma pauperis application reveals that petitioner is unable to afford the costs of suit. ECF No. 2. Accordingly, petitioner’s application to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

III. Background

Currently pending is petitioner’s motion to stay this action while he exhausts additional claims in the state courts. See ECF No. 10. Petitioner filed his initial petition on October 30,

1 2017. ECF No. 1. The court initially construed the petition as a successive challenge to  
2 petitioner's 2001 conviction for violation of California Penal Code § 476a (fraudulent bank  
3 transactions), and sentence to a term of 25-years-to-life based on four convictions that qualified as  
4 "prior strikes" under California's "Three Strikes Law," California Penal Code § 667. See ECF  
5 No. 6. The prior "strike" convictions arise from a 1988 Florida case in which petitioner pled  
6 guilty to four counts of second degree murder and agreed to cooperate with local, state and  
7 federal law enforcement agencies concerning crimes involving the "Yahweh sect." In exchange  
8 for his guilty plea, petitioner received a 22-year prison term, a new identity, and placement in the  
9 Federal Witness Protection Program. See ECF No. 1 at 52-65. Additionally, petitioner was  
10 accorded "the broadest type of use and derivative use immunity (but not transactional immunity)  
11 for crimes that were committed" by petitioner prior to the signing of the plea agreement. Id. at  
12 59-60.

13 Petitioner filed objections to the undersigned's recommendation this action be dismissed  
14 as successive,<sup>1</sup> asserting that the court had misconstrued the petition. Petitioner asserted that he  
15 was not challenging his 2001 conviction and sentence, but the state court's more recent denial of  
16 his petition for recall of sentencing and resentencing under California Propositions 36 and 47.<sup>2</sup>

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17 <sup>1</sup> On November 3, 2017, the undersigned found the instant petition successive and filed in this  
18 court without authorization from the Ninth Circuit Court of Appeals, as required under 28 U.S.C.  
19 § 2244(b). See ECF No. 6. This court recounted, id. at 2:

20 Petitioner's initial [federal] petition challenging his 2001 conviction  
21 and sentence was dismissed on August 28, 2001, for failure to  
22 exhaust state court remedies. See Rameses v. State of California,  
23 Case No. 2:00-cv-2710 DFL DAD P. Petitioner's second petition  
24 was denied on the merits on March 31, 2008, and later affirmed by  
25 the Ninth Circuit Court of Appeals. See Rameses v. Lacey, Case  
26 No. 2:04-cv-1173 GEB GGH P. Petitioner twice sought relief from  
27 that judgment, construed by the court as successive habeas petitions  
28 and denied on that basis. *Id.* Petitioner's third petition, entitled a  
"motion for extraordinary remedy of specific performance as part of  
plea agreement," was construed by the court as a petition for habeas  
relief under Section 2254, and dismissed without prejudice as  
successive. See Rameses v. United States District Court et al.,  
Case No. 2:11-cv-1292 GEB GGH P.

<sup>2</sup> Under California Penal Code § 1170.126, enacted in 2012 by the voters as "Proposition 36"  
(the "Three Strikes Reform Act"), a prisoner sentenced to an indeterminate term of life  
imprisonment, due to application of prior-conviction enhancements under California's Three  
Strikes Law, may petition the superior court for recall of sentence and resentencing within two

1 See ECF No. 8. Petitioner also asserted that he had exhausted his federal claims in the state  
2 courts. Id. Accordingly, the court vacated its November 3, 2017 findings and recommendations  
3 and granted petitioner thirty days to file an amended petition that clearly identified his federal  
4 claims. See ECF No. 9 (order filed Dec. 4, 2017). The court directed petitioner, in pertinent part,  
5 as follows:

6 In light of petitioner’s representations, the findings and  
7 recommendations will be vacated and petitioner will be directed to  
8 file an amended petition for writ of habeas corpus that clarifies the  
9 judgment challenged. In amending, petitioner should use the form  
10 provided by the court, set forth all of the information requested on  
11 the form, and attach all pertinent state court rulings. *Failure to  
12 comply with this order will confirm the undersigned’s initial  
13 assessment that this action should be dismissed.*

14 Id. at 1 (emphasis added).

15 On December 26, 2017, petitioner filed the pending motion to stay these proceedings  
16 while he exhausts a “new” claim in the state courts. ECF No. 10. Petitioner did not file an  
17 amended petition as directed or otherwise identify his exhausted and unexhausted federal claims.  
18 Petitioner states only that, on October 11, 2017 (three weeks before filing the instant federal  
19 petition), he filed in the El Dorado County Superior Court a “Petition for *Further Consideration*  
20 of Petitioner’s Recall and Resentencing Pursuant to Penal Code 1170.126(e)” (emphasis added),  
21 citing “new” California Supreme Court authority as set forth in People v. Estrada (July 24, 2017),  
22 3 Cal. 5th 661. Petitioner asserts that this “New Supreme Court precedent . . . was not available  
23 to Petitioner when he filed his federal writ of habeas corpus.” ECF No. 10 at 2. Petitioner states  
24 that, on December 11, 2017, the “Honorable Judge Kenneth J. Melikian” (El Dorado County  
25 Superior Court Judge)<sup>3</sup> “denied Petitioner’s Motion for Further Consideration of Petitioner’s

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26 years after the effective date of the law or at a later date upon a showing of good cause. See Cal.  
27 Penal Code § 1170.126. Under Penal Code § 1170.18, enacted in 2014 as “Proposition 47” (the  
28 “Safe Neighborhoods and Schools Act”), a petitioner may, pursuant to a “recall and resentencing  
petition,” seek reclassification of a felony conviction to a misdemeanor conviction unless the  
resentencing of petitioner would pose an unreasonable risk of danger to public safety. See Cal.  
Penal Code § 1170.18.

<sup>3</sup> This court may take judicial notice of its own records and the records of other courts. See  
United States v. Howard, 381 F.3d 873, 876 n.1 (9th Cir. 2004); United States v. Wilson, 631  
F.2d 118, 119 (9th Cir. 1980); see also Fed. R. Evid. 201 (court may take judicial notice of facts  
that are capable of accurate determination by sources whose accuracy cannot reasonably be

1 Recall and Resentencing Pursuant to Penal Code 1170.126(e),” and that petitioner then “filed his  
2 Notice of Appeal in the Superior Court County of El Dorado.” ECF No. 10 at 3. (El Dorado Co.  
3 Sup. Ct. Case No. PC 20170499.)<sup>4</sup> On this basis, petitioner requests a stay of his instant federal  
4 petition under Rhines v. Weber, 544 U.S. 269 (2005).<sup>5</sup>

5 IV. Legal Standards

6 Under Rule 4 of the Rules Governing Section 2254 Cases, this court must summarily  
7 dismiss a petition for writ of habeas corpus filed by a state prisoner if it “plainly appears from the  
8 petition and any attached exhibits that the petitioner is not entitled to relief in the district court.”

9 V. Analysis

10 It is now clear that the instant petition seeks to challenge the January 14, 2015 ruling of  
11 the El Dorado County Superior Court rejecting plaintiff’s initial petition for recall and  
12 resentencing, which petitioner has apparently exhausted in the state courts. It is also clear that  
13 petitioner’s request to stay this action reflects his effort to obtain the state courts’ reconsideration  
14 of the January 14, 2015 decision. Although petitioner has not provided a copy of the challenged  
15 ruling itself, he asserts that the following is an accurate excerpt:

16 The Court received a motion from the defendant requesting  
17 resentencing pursuant to Proposition 47 and the previous  
18 Proposition 36 (the Three Strikes Reform Act). [] The Court has  
reviewed the moving papers as well as the files in these matters and  
respectfully denies both requests.

19 The Court takes judicial notice of its own files and notes that  
20 defendant’s prior convictions disqualify him from resentencing  
under Penal Coe 1170.126(e). In order to be eligible for

21 questioned).

22 <sup>4</sup> Review of the California Court of Appeal’s Case Information website indicates that petitioner  
23 filed his notice of appeal in the trial court on December 21, 2017; the appeal was dismissed on  
24 January 19, 2018, and the remittitur issued on March 23, 2018. Cal. Ct. of App. (3rd Dist.) Case  
No. C086263. As of this writing, it does not appear that petitioner has sought relief in the  
California Supreme Court.

25 <sup>5</sup> A Rhines stay is available for a habeas petition (1) containing only unexhausted federal claims,  
26 or (2) that is “mixed” (containing both exhausted and unexhausted federal claims). See Rhines,  
27 supra; see also Mena v. Long, 813 F.3d 907, 910 (9th Cir. 2016). A Rhines stay preserves the  
28 federal filing date for unexhausted claims contained in the federal petition. In order to obtain a  
stay under Rhines, the petitioner must show that (1) good cause exists for his failure to have first  
exhausted his claims in the state courts, (2) the claims at issue are potentially meritorious, and (3)  
petitioner has not been intentionally dilatory. Rhines, at 544 U.S. at 277-78.

1           resentencing the prior convictions cannot be serious or violent  
2           felony [sic] as set forth in Penal Code 1192.7(c). The defendant's  
3           priors are set forth there.

4           Further, the defendant does not qualify for resentencing pursuant to  
5           Proposition 47 for the same reason. Those priors disqualify the  
6           defendant under Penal Code 1170.18(i). Finally, to the extent  
7           necessary, the court makes the finding that the defendant remains a  
8           danger to society based on the priors.

9           In sum, the petition for resentencing under both Proposition 36 and  
10          47 is denied.

11          See ECF No. 1 at 3.

12          Petitioner's eligibility for recall and resentencing under California law does not present a  
13          federal habeas claim. "[I]t is not the province of a federal habeas court to reexamine state-court  
14          determinations on state-law questions." Estelle v. McGuire, 502 U.S. 62, 67-68 (1991).  
15          "[W]hether a state court properly construed or applied state sentencing law is a question of state  
16          law not subject to federal habeas review." Nelson v. Biter, 33 F. Supp. 3d 1173, 1177 (C.D. Cal.  
17          2014) (collecting cases). More specifically, "[w]hether or not a prior conviction properly  
18          constitutes a 'serious' or 'violent' felony, as that term is defined in California's Three Strikes  
19          Law, involves interpretation of state sentencing law. Federal courts are bound by a state court's  
20          construction of its own penal statutes, and this court must defer to the California courts'  
21          interpretation of the California Three Strikes Law unless its interpretation is untenable or amounts  
22          to a subterfuge to avoid federal review of a constitutional violation." Mitchell v. Soto, 2015 WL  
23          1119683, at \*5, 2015 U.S. Dist. LEXIS 30011, at \*12, Case No. 2:14-CV-1438 TLN GGH P  
24          (E.D. Cal. Mar. 11, 2015, adopted in full Apr. 13, 2015) (citations and internal quotation marks  
25          omitted); see also Tuggle v. Perez, 2016 WL 1377790, at \*7, 2016 U.S. Dist. LEXIS 47369, at  
26          \*18-19, Case No. 2:14-cv-1680 KJM CKD P (E.D. Cal. Apr. 7, 2016, adopted in full June 3,  
27          2016) (collecting cases).

28          Petitioner has attempted to state a federal habeas claim on Fifth Amendment and due  
29          process grounds by asserting that his 1988 plea agreement "immunized" his prior murder  
30          convictions from being construed as "strikes" under California's Three Strikes Law. See e.g.,  
31          ECF No. 1 at 33 et seq. This claim, however, has previously been rejected by this court – and on

1 appeal – when addressing the merits of petitioner’s first habeas petition challenging his 2001  
2 sentence. See Rameses v. Kernan, Case 2:04-cv-01173 GEB GGH P, ECF No. 55 at 20-4  
3 (findings and recommendations filed Nov. 27, 2007, adopted in full Mar. 31, 2008); see also ECF  
4 Nos. 82 & 83 (affirmed by the Ninth Circuit Court of Appeals, Case No. 08-16584, memorandum  
5 decision filed Feb. 18, 2010; mandate issued Apr. 27, 2010). Petitioner subsequently attempted to  
6 pursue the claim in a “motion for extraordinary remedy of specific performance as part of plea  
7 agreement,” which the court construed as a successive petition. See Rameses v. United States  
8 District Court, Case 2:11-cv-01291 KJM GGH P, ECF No. 10 (findings and recommendations  
9 filed Aug. 11, 2011, adopted in full Jan. 4, 2012); id. at ECF No. 27 (denial of request for  
10 certificate of appealability filed by Ninth Circuit Court of Appeals on Jan. 25, 2013).

11 To the extent petitioner now seeks to pursue a duplicate federal claim challenging his  
12 2001 sentence, the instant petition constitutes another “second or successive” challenge to that  
13 judgment. A “second or successive” petition may not be considered by the district court without  
14 prior authorization from the Ninth Circuit Court of Appeals. See 28 U.S.C. § 2244(b); Felker v.  
15 Turpin, 518 U.S. 651, 656-57 (1996). Prior authorization is a prerequisite to this court’s  
16 jurisdiction. Burton v. Stewart, 549 U.S. 147, 152 (2007); Cooper v. Calderon, 274 F.3d 1270,  
17 1274 (9th Cir. 2001). Because petitioner “neither sought nor received authorization from the  
18 Court of Appeals” before filing the instant petition challenging the same custody challenged in  
19 his First Amended Petition filed September 7, 2005 (Case No. 2:04-cv-01173 GEB GGH P) and  
20 resolved by this court on the merits, this court remains “without jurisdiction to entertain” the  
21 instant petition. Burton, 549 U.S. at 157.

22 Petitioner’s reliance on an asserted change in state law, as set forth in Estrada, does not  
23 help him here. Federal habeas relief is available only upon a showing that petitioner’s custody is  
24 “in violation of the Constitution or laws or treaties of the *United States*.” 28 U.S.C. § 2254(a)  
25 (emphasis added). Therefore, petitioner’s reliance on “newly decided” California Supreme Court  
26 authority does not state an independent federal habeas claim and thus provides no ground upon to  
27 stay this action under Rhines. Under the present circumstances, the instant petition should be  
28 dismissed and petitioner’s stay request denied as moot.

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VI. Conclusion


For the foregoing reasons, IT IS HEREBY ORDERED that petitioner’s application to proceed in forma pauperis, ECF No. 2, is granted.

Further, IT IS HEREBY RECOMMENDED that:

1. This action be dismissed for lack of federal habeas jurisdiction, for failure to state a cognizable federal habeas claim and because successive.
2. Petitioner’s motion to stay this action, ECF No. 10, be denied as moot.

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 fourteen (14) days after being served with these findings and recommendations, petitioner may file written objections with the court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” If petitioner files objections, he shall also address whether a certificate of appealability should issue and, if so, why and as to which issues. See 28 U.S.C. § 2253(c)(2). Petitioner is 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: April 4, 2018

  
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ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE