



1 Although the asserted grounds for relief are practically indecipherable, it appears that petitioner is  
2 attempting to challenge either the conviction itself or his subsequent efforts to reduce his felony  
3 convictions to misdemeanors under Proposition 47. In either event, the petition fails to state a  
4 claim for relief and should be dismissed.

5 Under 28 U.S.C. § 2254(a), a federal court “shall entertain an application for a writ of  
6 habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on  
7 the ground that he is in custody in violation of the Constitution or the laws or treaties of the  
8 United States.” The Supreme Court has interpreted § 2254 as requiring that the habeas petitioner  
9 be “‘in custody’ under the conviction or sentence under attack at the time his petition is filed.”  
10 Maleng v. Cook, 490 U.S. 488, 490-91 (1989) (per curiam) (citation omitted). The custody  
11 requirement of § 2254 is jurisdictional. Williamson v. Gregoire, 151 F.3d 1180, 1182 (9th Cir.  
12 1998) (citation omitted).

13 Petitioner states that in 1989 he was given a total sentence of seven years and eight  
14 months in prison in Case Nos. 88720 and 88721, though he also makes numerous references to a  
15 five-year error.<sup>1</sup> ECF No. 1 at 1, 12-38. In light of these allegations, petitioner’s current custody  
16 cannot be based on the convictions he is attempting to challenge, even if he was subject to an  
17 additional five years of confinement.<sup>2</sup>

18 Moreover, to the extent petitioner’s claim is related to the treatment of his felonies under  
19 Proposition 47, he fails to state a claim.

20 Proposition 47 reclassified as misdemeanors certain offenses that  
21 previously were felonies or “wobblers.” [n.1] It also added Penal  
22 Code section 1170.18, which permits those previously convicted of  
23 felony offenses that Proposition 47 reduced to misdemeanors to  
petition to have such felony convictions resentenced or

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24 <sup>1</sup> It appears that when he was convicted, petitioner was subject to a five-year enhancement which  
was recorded in the wrong case, and the record was later corrected in 1998. ECF No. 1 at 54.

25 <sup>2</sup> The petition also references two state court appeals (ECF No. 1 at 1), and review of the  
26 combined opinion in those appeals confirms that petitioner has discharged his sentences in Case  
27 Nos. 88720 and 88721. Although the opinion states that petitioner was sentenced to fifteen years  
28 and eight months in prison, it also states that as of the date of the opinion, October 3, 2017,  
petitioner had completed his sentence in both cases. People v. Chaidez, Nos. C082672 &  
C083099, 2017 WL 4377028, at \*1 & n.3, 2017 Cal. App. Unpub. LEXIS 6827, at \*1-2 (Cal. Ct.  
App. Oct. 3, 2017).

1 redesignated as misdemeanors. Section 1170.18 allows those  
2 currently serving sentences for Proposition 47 eligible felony  
3 convictions to petition to have their sentences recalled and be  
4 “resentenced to a misdemeanor.” (§ 1170.18, subd. (b).) It also  
5 allows those who have already completed their sentences for  
6 Proposition 47 eligible felony convictions to petition to have their  
7 convictions “designated as misdemeanors.” (§ 1170.18, subd. (f).)  
8 Once an offense is resentenced or redesignated as a misdemeanor it  
9 “shall be considered a misdemeanor for all purposes.” (Pen. Code,  
10 § 1170.18, subd. (k).)

11 [n.1] Wobblers are “a special class of crimes involving conduct  
12 that varies widely in its level of seriousness,” and may therefore be  
13 “chargeable or . . . punishable as either a felony or a misdemeanor.”  
14 (People v. Park (2013) 56 Cal. 4th 782, 789, 156 Cal. Rptr. 3d 307,  
15 299 P. 3d 1263 (Park); see also People v. Kunkel (1985) 176 Cal.  
16 App. 3d 46, 51, fn.3, 221 Cal. Rptr. 359.)

17 People v. Buycks, 5 Cal. 5th 857, 871 (2018) (omission in original) (second footnote omitted).

18 Based on the petition and attachments, it appears that petitioner took advantage of the procedure  
19 for reclassifying previous offenses and had some, but not all, of his felonies reclassified as  
20 misdemeanors. ECF No. 1 at 1, 17-18, 24-25, 31-34, 58-62. He appears to argue either that all  
21 his felonies should have been reclassified or that he should have been resentenced on the  
22 reclassified convictions. Id.

23 “[I]t is not the province of a federal habeas court to reexamine state-court determinations  
24 on state-law questions.” Estelle v. McGuire, 502 U.S. 62, 67-68 (1991); Middleton v. Cupp, 768  
25 F.2d 1083, 1085 (9th Cir. 1985) (habeas relief “is unavailable for alleged error in the  
26 interpretation or application of state law”). This includes the interpretation or application of state  
27 sentencing laws. Miller v. Vasquez, 868 F.2d 1116, 1118-19 (9th Cir. 1989) (declining to address  
28 “[w]hether assault with a deadly weapon qualifies as a ‘serious felony’ under California’s  
sentence enhancement provisions [because it] is a question of state sentencing law”). In this case,  
the questions whether all of petitioner’s felonies should have been reclassified and whether he  
should have been resentenced<sup>3</sup> are exclusively questions of state law and therefore not cognizable  
in federal habeas. Accordingly, the petition should be dismissed for lack of jurisdiction.

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<sup>3</sup> The California Court of Appeal held that “[s]ince defendant has served his sentence on the prior convictions in this case, he was not entitled to resentencing or a hearing in the trial court.” Chaidez, 2017 WL 4377028, at \*2, 2017 Cal. App. Unpub. LEXIS 6827, at \*5.

1           II.     Certificate of Appealability

2           Pursuant to Rule 11 of the Federal Rules Governing Section 2254 Cases, this court must  
3 issue or deny a certificate of appealability when it enters a final order adverse to the applicant. A  
4 certificate of appealability may issue only “if the applicant has made a substantial showing of the  
5 denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

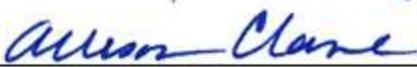
6           For the reasons set forth in these findings and recommendations, a substantial showing of  
7 the denial of a constitutional right has not been made in this case. Therefore, no certificate of  
8 appealability should issue.

9           Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court shall randomly  
10 assign a United States District Judge to this action.

11           IT IS FURTHER HEREBY RECOMMENDED that petitioner’s application for a writ of  
12 habeas corpus be dismissed for lack of jurisdiction.

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

20 DATED: November 7, 2018

21   
22 ALLISON CLAIRE  
23 UNITED STATES MAGISTRATE JUDGE  
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