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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LIONZO ANGEL VILLARREAL,

Petitioner,

v.

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Respondent.

No. 2:18-cv-3239-EFB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner is a state prisoner who, represented by counsel, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has filed a petition (ECF No. 1) which, for the reasons stated below, does not state a viable federal claim.

I. Legal Standards

The court must dismiss a habeas petition or portion thereof if the prisoner raises claims that are legally “frivolous or malicious” or fail to state a basis on which habeas relief may be granted. 28 U.S.C. § 1915A(b)(1),(2). The court must dismiss a habeas petition “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief[.]” Rule 4, Rules Governing Section 2254 Cases.

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1 II. Analysis

2 Petitioner states that he was convicted in 2012 of: (1) conspiracy to commit first degree
3 murder; (2) a gang enhancement; and (3) a gun enhancement. ECF No. 1 at 8. He was sentenced
4 to life without parole on conspiracy to commit murder and twenty-five to life on the gun
5 enhancement (to run consecutively). *Id.* He brings this petition on the basis that California
6 Senate Bill 620, signed into law in 2017, provides a sentencing court with discretion as to the
7 imposition of the twenty-five to life firearm enhancement. *Id.* at 9. Pursuant to the bill, the
8 California Penal Code was changed to provide that:

9 The court may, in the interest of justice pursuant to Section 1385 and
10 at the time of sentencing, strike or dismiss an enhancement otherwise
11 required to be imposed by this section. The authority provided by this
 subdivision applies to any resentencing that may occur pursuant to
 any other law.

12 Cal. Penal Code § 12022.53(h). Given that the sentencing court lacked such discretion in 2012,
13 petitioner requests that his habeas petition be granted and his case referred back to the San
14 Joaquin Superior Court. *Id.*

15 Petitioner’s claim fails insofar as it involves only an application of state sentencing laws
16 and, thus, does not give rise to a federal question. *See Waddington v. Sarausad*, 555 U.S. 179,
17 192 n.5 (2009) (“[W]e have repeatedly held that it is not the province of a federal habeas court to
18 reexamine state-court determinations on state-law questions.”); *Rivera v. Illinois*, 556 U.S. 148,
19 158 (2009) (“[A] mere error of state law . . . is not a denial of due process”) (quoting *Engle v.*
20 *Isaac*, 456 U.S. 107, 121, n.21 (1982)); *Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991) (“[W]e
21 reemphasize that it is not the province of a federal habeas court to reexamine state-court
22 determinations on state-law questions.”). The court recognizes that petitioner claims that his
23 sentence is invalid not only under state law, but also pursuant to the Fifth and Sixth Amendments
24 to the U.S. Constitution. He does not, however, satisfactorily explain how his state claims
25 intersect with the Constitution. And the mere invocation of the Constitution is insufficient to
26 convert a claim based on state law – as the immediate one clearly is – into a federal one.¹ *See*

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28 ¹ The U.S. Court of Appeals for the Ninth Circuit has carved out a potential exception for
showings of “fundamental unfairness.” *See Christian v. Rhode*, 41 F.3d 461, 469 (9th Cir.1994)

1 *Langford v. Day*, 110 F.3d 1380, 1389 (9th Cir. 1997) (“[A claimant] may not, however,
2 transform a state-law issue into a federal one merely by asserting a violation of due process”) (as modified).

3
4 III. Conclusion

5 Accordingly, it is ORDERED that the Clerk of Court shall randomly assign a United
6 States District Judge to this case.

7 Further, it is hereby RECOMMENDED that the petition (ECF No. 1) be DISMISSED for
8 failure to state a cognizable federal claim.

9 These findings and recommendations are submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
11 after being served with these findings and recommendations, any party may file written
12 objections with the court and serve a copy on all parties. Such a document should be captioned
13 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
14 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
15 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). In
16 his objections petitioner may address whether a certificate of appealability should issue in the
17 event he files an appeal of the judgment in this case. *See* Rule 11, Rules Governing § 2254 Cases
18 (the district court must issue or deny a certificate of appealability when it enters a final order
19 adverse to the applicant).

20 DATED: September 24, 2019.

21 
22 EDMUND F. BRENNAN
23 UNITED STATES MAGISTRATE JUDGE
24
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27 (“Absent a showing of fundamental unfairness, a state court's misapplication of its own
28 sentencing laws does not justify federal habeas relief.”) (emphasis added). Suffice it to say,
petitioner has not shown that the state courts’ decision not to revisit his gun enhancement is
“fundamentally unfair.”