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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LEONARD BAGSBY,  
Petitioner,  
v.  
ROBERT FOX,  
Respondent.

No. 2:19-cv-0192 WBS AC

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, superseded by three amended petitions, together with applications to proceed in forma pauperis.

Examination of the in forma pauperis application reveals that petitioner is unable to afford the costs of suit. Accordingly, the application to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts (Habeas Rules) requires the court to summarily dismiss a habeas petition, “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court.” The several habeas petitions (ECF Nos. 1, 8, 9 & 10) all allege that CDCR failed to comply with Proposition 57. Petitioner, who was convicted in 1995 of crimes including robbery, and sentenced to 118 years to life imprisonment, challenges a decision by the California

1 Department of Corrections and Rehabilitation that he is not eligible for early parole consideration  
2 under Proposition 57.<sup>1</sup> Petitioner contends that he is eligible for such consideration because his  
3 primary offense does not constitute a “violent offense,” and because state court interpretations of  
4 Proposition 57 changed the eligibility criteria to include him.

5 Federal habeas relief is available to state inmates who are “in custody in violation of the  
6 Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). Habeas relief is not  
7 available for state law errors of any kind. Middleton v. Cupp, 768 F.2d 1083, 1085 (9th Cir.  
8 1985). “Absent a showing of fundamental unfairness, a state court’s misapplication of its own  
9 sentencing laws does not justify federal habeas relief.” Christian v. Rhode, 41 F.3d 461, 469 (9th  
10 Cir. 1994). A habeas petitioner must show that an alleged state sentencing error was “so arbitrary  
11 or capricious as to constitute an independent due process violation.” Richmond v. Lewis, 506  
12 U.S. 40, 50 (1992). Proposition 57 addresses parole consideration rather than sentencing per se,  
13 and the U.S. Constitution establishes no substantive right to parole or consideration for parole.  
14 Swarthout v. Cooke, 562 U.S. 216, 220 (2011). Accordingly, a claim based on denial of  
15 consideration for parole does not present a federal issue.

16 Petitioner's Proposition 57 claim is not cognizable on federal habeas review because it  
17 presents a question of state law that does not implicate federal rights. Petitioner cannot transform  
18 a state law issue into a federal one by merely invoking due process. Langford v. Day, 110 F.3d  
19 1380, 1389 (9th Cir. 1996). It is clear from the several petitions and their attachments that  
20 petitioner raised his Proposition 57 claims in state court – two of the four petitions filed in this  
21 court are copies of those submitted to the Superior Court in San Bernadino County. See ECF  
22 Nos. 8, 9. Although petitioner does not include any state court orders denying him relief, and  
23 does not provide information about the exhaustion of state court remedies in the petitions, it is  
24 apparent that no relief was provided. A state court determination that petitioner is not eligible

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25 <sup>1</sup> Proposition 57 added Article 1, Section 32 to the California Constitution. It states in relevant  
26 part: “Parole consideration: Any person convicted of a nonviolent felony offense and sentenced to  
27 state prison shall be eligible for parole consideration after completing the full term of his or her  
28 primary offense,” defined for these purposes as “the longest term of imprisonment imposed by the  
court for any offense, excluding the imposition of an enhancement, consecutive sentence, or  
alternative sentence.” Cal. Const., art. I, § 32, subds. (a)(1), (a)(1)(A).

1 under Proposition 57 would be binding on this court. See Bradshaw v. Richey, 546 U.S. 74, 76  
2 (2005) (per curiam) (state court's interpretation of state law is binding on federal habeas court).  
3 There is no need to require submission of the state court record, because this court lacks  
4 jurisdiction in any case to consider the proper construction and application of Proposition 57. See  
5 Estelle v. McGuire, 502 U.S. 62, 67-68 (1991) (it is not the province of a federal habeas court to  
6 determine state-law questions).

7 Because it plainly appears that the petitioner is not entitled to relief in the district court,  
8 the petitions should be summarily dismissed.

9 Accordingly, IT IS HEREBY ORDERED that petitioner's applications to proceed in  
10 forma pauperis (ECF Nos. 3, 6, 11) are granted.

11 IT IS FURTHER RECOMMENDED that petitioner's applications for a writ of habeas  
12 corpus be dismissed.

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 twenty-one days  
15 after being served with these findings and recommendations, petitioner may file written  
16 objections with the court. Such a document should be captioned "Objections to Magistrate  
17 Judge's Findings and Recommendations." If petitioner files objections, he shall also address  
18 whether a certificate of appealability should issue and, if so, why and as to which issues. See 28  
19 U.S.C. § 2253(c)(2). Petitioner is advised that failure to file objections within the specified time  
20 may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th  
21 Cir. 1991).

22 DATED: April 7, 2021

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24 ALLISON CLAIRE  
25 UNITED STATES MAGISTRATE JUDGE  
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