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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 BYRON EUGENE JOHNSON,

12 Petitioner,

13 v.

14 PEOPLE OF THE STATE OF
15 CALIFORNIA,

16 Respondent.

No. 2:19-cv-02439 GGH P

ORDER AND FINDINGS AND
RECOMMENDATIONS

17 Petitioner, a state prisoner proceeding pro se, has filed a petition for writ of habeas corpus
18 pursuant to 28 U.S.C. §2254. Petitioner has not, however, filed an in forma pauperis affidavit or
19 paid the required filing fee (\$5.00). See 28 U.S.C. §§ 1914(a); 1915(a). Nevertheless, the
20 undersigned will recommend summary dismissal of the pending petition based on a failure to
21 raise a federal cognizable claim.

22 Petitioner requests in his habeas petition modification or resentencing pursuant to
23 California Assembly Bill 1618. ECF No. 1 at 3. Petitioner was convicted and sentenced in
24 Sacramento County Superior Court for corporal punishment on a spouse and received sentencing
25 enhancements for prior felonies. Id. at 2. The petition, however, is directed to the California
26 Supreme Court. Id. at 1; see also ECF No. 1-1. It appears that the petition may have been
27 misfiled in the incorrect court. On the contrary, if petitioner intended to file in this court, the
28 petition nevertheless fails to raise a federal cognizable claim.

1 A writ of habeas corpus is available under 28 U.S.C. § 2254(a) only on the basis of some
2 transgression of federal law binding on the state courts. Middleton v. Cupp, 768 F.2d 1083, 1085
3 (9th Cir. 1985); Gutierrez v. Griggs, 695 F.2d 1195, 1197 (9th Cir. 1983). It is unavailable for
4 alleged error in the interpretation or application of state law. Middleton, 768 F.2d at 1085; see
5 also Lincoln v. Sunn, 807 F.2d 805, 814 (9th Cir. 1983); Givens v. Housewright, 786 F.2d 1378,
6 1381 (9th Cir. 1986). “In conducting habeas review, a federal court is limited to deciding whether
7 a conviction violated the Constitution, laws, or treaties of the United States.” Estelle v. McGuire,
8 502 U.S. 62, 67-68 (1991). “[R]ecently enacted Assembly Bill No. 1618 amended the Penal Code
9 to provide, in relevant part, that a plea bargain ‘that requires a defendant to generally waive future
10 benefits of legislative enactments, initiatives, appellate decisions, or other changes in the law that
11 may retroactively apply after the date of the plea is void as against public policy.’ ([California
12 Pen. Code] § 1016.8, subd. (b).)” People v. Ellis, No. F076421, 2019 WL 7161342, at *5 (Ct.
13 App. 2019). Accordingly, petitioner’s claim that his sentence should be reduced pursuant to
14 Assembly Bill 1618 is not a cognizable federal claim.

15 Rule 4 of the Rules Governing Habeas Corpus Cases Under Section 2254 provides for
16 summary dismissal of a habeas petition “[i]f it plainly appears from the face of the petition and
17 any exhibits annexed to it that the petitioner is not entitled to relief in the district court.” The
18 Advisory Committee Notes to Rule 8 also indicates that the court may deny a petition for writ of
19 habeas corpus, either on its own motion under Rule 4, pursuant to the respondent’s motion to
20 dismiss, or after an answer to the petition has been filed. In the instant case, it is plain from the
21 petition and the exhibit provided that petitioner is not entitled to federal habeas relief. Therefore,
22 the petition should be summarily dismissed.

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

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1 findings and recommendations, a substantial showing of the denial of a constitutional right has
2 not been made in this case.¹

3 In addition, petitioner has requested the appointment of counsel. There currently exists no
4 absolute right to appointment of counsel in habeas proceedings. See Nevius v. Sumner, 105 F.3d
5 453, 460 (9th Cir. 1996). However, 18 U.S.C. § 3006A authorizes the appointment of counsel at
6 any stage of the case “if the interests of justice so require.” See Rule 8(c), Fed. R. Governing §
7 2254 Cases. In the present case, the court does not find that the interests of justice would be
8 served by the appointment of counsel at the present time.

9 In accordance with the above, IT IS HEREBY ORDERED that:

10 1. Petitioner’s motion for appointment of counsel (ECF No. 2) is denied without
11 prejudice to a renewal of the motion at a later stage of the proceedings; and

12 2. The Clerk of the Court is directed to assign a district judge to this action.

13 Further, IT IS HEREBY RECOMMENDED that:

14 1. Petitioner’s application for a writ of habeas corpus be summarily dismissed; and

15 2. This court decline to issue the certificate of appealability referenced in 28 U.S.C. §
16 2253.

17 These findings and recommendations are submitted to the United States District Judge
18 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
19 after being served with these findings and recommendations, petitioner may file written
20 objections with the court. The document should be captioned “Objections to Magistrate Judge’s
21 Findings and Recommendations.” Failure to file objections within the specified time may waive
22 the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.1991).

23 Dated: December 30, 2019

24 /s/ Gregory G. Hollows
25 UNITED STATES MAGISTRATE JUDGE
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28 ¹ Nothing in this Findings and Recommendations precludes petitioner from seeking appropriate
relief in the state courts.