



1           Petitioner raises two claims. First, he argues that the state appellate court should have  
2 remanded his case so that the trial court could exercise its discretion, under California state law,  
3 to strike a five-year prior serious felony sentencing enhancement. ECF No. 1 at 2. But a state  
4 court’s interpretation of state sentencing laws is not reviewable by a federal habeas court. *See*  
5 *Lewis v. Jeffers*, 497 U.S. 764, 780 (1990) (rejecting claim that a state court misapplied its own  
6 aggravating circumstance because “federal habeas corpus relief does not lie for errors of state law  
7 . . . .”); *see also Estelle v. McGuire*, 502 U.S. 62, 68 (1991) (“In conducting habeas review, a  
8 federal court is limited to deciding whether a conviction violated the Constitution, laws, or  
9 treaties of the United States.”).

10           Second, petitioner argues that the trial court violated his due process rights by imposing  
11 mandatory fees without assessing whether he had the ability to pay for them. The Supreme Court  
12 has held that a state may not impose a fine as a sentence and then convert it into a jail term solely  
13 because of a defendant’s indigency. *Bearden v. Georgia*, 461 U.S. 660, 667-68 (1983). But the  
14 brief attached to the petition concedes that petitioner is not incarcerated because of his indigency.  
15 ECF No. 1 at 39. The Ninth Circuit has held that petitions that attack restitution but would not  
16 directly impact a petitioner’s liberty are not cognizable on federal habeas review. *See Bailey v.*  
17 *Hill*, 599 F.3d 976, 981 (9th Cir. 2010).

18           I will allow petitioner to amend his petition before I recommend that it be dismissed.

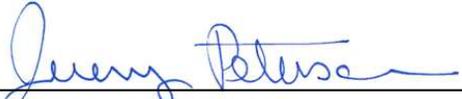
19           It is ORDERED that:

20           1.       Petitioner may file an amended petition within sixty days of this order’s entry. If  
21 he does not, I will recommend that the current petition be dismissed for the reasons stated in this  
22 order.

23           2.       The Clerk of Court is directed to send petitioner a federal habeas form.

24  
25 IT IS SO ORDERED.

26 Dated: April 26, 2021

27   
28 JEREMY D. PETERSON  
UNITED STATES MAGISTRATE JUDGE