

1 1.The Lackawanna County Decision Bars Petitioner’s Requested Relief

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3 In Lackawanna County District Attorney v. Coss, 353 U.S. 394 (2001), the
4 Supreme Court held that habeas relief is unavailable for state prisoners to challenge past
5 convictions on the grounds that those convictions were used to enhance a current sentence. See
6 Lackawanna, 532 U.S. at 396. This is grounded in the policy recognizing “the need for finality of
7 convictions and ease of administration.” Id. at 402.

8 However, in the Lackawanna County decision, the Supreme Court identified several
9 potential exceptions to this prohibition, including but not limited to an exception for claims that
10 the past conviction “was obtained where there was a failure to appoint counsel in violation of the
11 Sixth Amendment.” Id. at 404. Another potential exception exists where a “defendant may
12 obtain compelling evidence that he is actually innocent . . . which he could not have uncovered in
13 a timely manner.” Id. at 405. Finally, an exception may lie where “a state court. . ., without
14 justification, refuse[s] to rule on a constitutional claim that has been properly presented to it.” Id.
15 The Ninth Circuit identified such a situation in Dubrin v. California, 720 F.3d 1095 (9th Cir.
16 2013), where a petitioner was allowed to attack a prior conviction used to enhance his sentence
17 because the state courts erroneously dismissed the petitioner’s claims, and “refus[ed] to reach the
18 merits.” Id. at 1100.

19 Here, in opposition to Respondent’s motion, Petitioner states that his prior
20 convictions were used to enhance his current sentence. See ECF No. 19, 9-10. Following the
21 rule set down in Lackawanna, such a challenge is not cognizable. However, Petitioner argues that
22 his prior convictions should fall within the potential exceptions laid down in Lackawanna and
23 expounded upon in Dubrin. See ECF No. 19, 7-8. Specifically, Petitioner argues that in two
24 prior state court cases (numbers S16CRM0096, and P17CRF0114) he was constructively denied
25 counsel. See id. This could fall under the exception for challenges based on a failure to appoint
26 counsel. Whether the facts of Petitioner’s case are sufficient to show that his claims should
27 proceed is difficult to say given that his petition is 1714 pages long, and contains significant
28 portions of trial records, email chains, and lengthy case citations. See e.g. ECF No. 12 (amended

1 petition). Because it is possible that Petitioner’s challenges to past convictions may proceed, their
2 potential bar is not dispositive on the current record. Respondent’s motion to dismiss should be
3 granted, but without prejudice to Petitioner’s ability to clearly allege facts which might place the
4 case within a Lackawanna exception.

5 2. Rule 2 (e) Requires Petitioner to File Separate Petitions For Each Challenged
6 Judgement

7 Respondent’s second basis upon which dismissal is sought is Petitioner’s failure to
8 comply with Rule 2(e) of the Federal Rules Governing Section 2254 Cases, which states that “[a]
9 petitioner who seeks relief from judgments of more than one state court must file a separate
10 petition covering the judgment . . . of each court.” Fed. R. Gov. § 2254 Cases 2(e). See, e.g.,
11 Byerly v. Davis, 2021 U.S. App. LEXIS 24848, *2 (9th Cir. 2021); Townsend v. Price, 2020 U.S.
12 Dist. LEXIS 62840, *2-*3 (E.D. Cal. 2020) (adopted in full by Townsend v. Price, 2020 U.S.
13 Dist. LEXIS 86173 (E.D. Cal. 2020)). Petitioner has filed a challenge to three state court
14 convictions, case numbers P17CRF0144, P16CRM0096, and S14CRM0465. See ECF No. 12, 1.
15 While Petitioner may have valid challenges to each of these three state court convictions, his
16 challenges to each must be filed separately. Therefore, this petition should be dismissed without
17 prejudice to Petitioner re-filing separate petitions challenging each conviction

18 Given the deficiencies is Petitioner’s filing, the Court recommends dismissal of
19 the current petition with leave to amend to allege additional facts relating to any Lackawanna
20 exceptions. These findings and recommendations are submitted to the United States District
21 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
22 after being served with these findings and recommendations, any party may file written
23 objections with the court. Responses to objections shall be filed within 14 days after service of
24 objections. Failure to file objections within the specified time may waive the right to appeal.
25 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

26 Dated: June 22, 2022

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28 DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE