

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

EARNEST S. HARRIS,

Petitioner,

v.

WARDEN FOLSOM STATE PRISON,

Respondent.

No. 2:21-cv-1749 AC P

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, together with an application to proceed in forma pauperis.

I. Application to Proceed In Forma Pauperis

Examination of the in forma pauperis application reveals that petitioner is unable to afford the costs of suit. ECF No. 9. Accordingly, the application to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

II. Facts

While serving a state prison sentence, petitioner was convicted in the Del Norte County Superior Court of three separate in-prison crimes. ECF No. 1 at 5-6. The first conviction was for attempted murder, which is classified as a violent offense, and the subsequent convictions were for non-violent offenses. Id. at 6. Petitioner is currently in custody at the California State Prison, Sacramento. He challenges the California Department of Corrections and Rehabilitation’s

1 determination that he is not eligible for 50% credit earning for his two non-violent offenses on the
2 ground that under Proposition 57¹ all non-violent offenses are eligible for 50% credit earning. Id.
3 Petitioner administratively grieved the matter, and unsuccessfully sought habeas relief in the
4 California courts. Id. at 8-36.

5 III. Jurisdiction

6 Pursuant to 28 U.S.C § 2241(d), courts in both the district of conviction and the district of
7 confinement have concurrent jurisdiction over applications for habeas corpus filed by state
8 prisoners. Because petitioner is challenging only the manner in which his sentence is being
9 executed and not the validity of the underlying criminal judgment from the Del Norte County
10 Superior Court, this judicial district, where petitioner is currently confined, is the most
11 appropriate forum for the instant action. Dunne v. Henman, 875 F.2d 244, 249 (9th Cir. 1989)
12 (“The proper forum to challenge the execution of a sentence is the district where the prisoner is
13 confined.” (citation omitted)).

14 IV. Discussion

15 Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts
16 (Habeas Rules) requires the court to summarily dismiss a habeas petition, “[i]f it plainly appears
17 from the petition and any attached exhibits that the petitioner is not entitled to relief in the district
18 court.”

19 Federal habeas relief is available to state inmates who are “in custody in violation of the
20 Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). Habeas relief is not
21 available for state law errors of any kind. Middleton v. Cupp, 768 F.2d 1083, 1085 (9th Cir.
22 1985). “Absent a showing of fundamental unfairness, a state court’s misapplication of its own
23 sentencing laws does not justify federal habeas relief.” Christian v. Rhode, 41 F.3d 461, 469 (9th
24 Cir. 1994). A habeas petitioner must show that an alleged state sentencing error was “so arbitrary

25 ¹ 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 or capricious as to constitute an independent due process violation.” Richmond v. Lewis, 506
2 U.S. 40, 50 (1992). Proposition 57 addresses parole rather than sentencing per se, and the United
3 States Constitution establishes no substantive right to parole or consideration for parole.
4 Swarthout v. Cooke, 562 U.S. 216, 220 (2011).

5 Petitioner’s Proposition 57 claim is not cognizable on federal habeas review because it
6 presents a question of state law that does not implicate federal rights. Petitioner cannot transform
7 a state law issue into a federal one by merely invoking due process. Langford v. Day, 110 F.3d
8 1380, 1389 (9th Cir. 1996). The CDCR determined that because of how petitioner was sentenced
9 for his non-violent offenses, his release credits were properly calculated at 20% under state law.
10 The California superior court rejected petitioner’s bid for increased credit earning under
11 Proposition 57, ECF No. 1 at 35-36, and its interpretation of state law is not reviewable in this
12 court, see Bradshaw v. Richey, 546 U.S. 74, 76 (2005) (per curiam) (state court’s interpretation of
13 state law is binding on federal habeas court). Because petitioner’s challenge to his credit
14 calculation was rejected by CDCR based on state law, and the result has been upheld as correct
15 under state law, the denial of increased credit earning cannot have been arbitrary or capricious.

16 “[I]t is not the province of a federal habeas court to reexamine state-court determinations
17 on state-law questions.” Estelle v. McGuire, 502 U.S. 62, 67-68 (1991). Because it plainly
18 appears that the petitioner is not entitled to relief in the district court, the petition should be
19 summarily dismissed.

20 Accordingly, IT IS HEREBY ORDERED that:

- 21 1. Petitioner’s application to proceed in forma pauperis, ECF No. 9, is GRANTED.
- 22 2. The Clerk of the Court shall randomly assign a United States District Judge to this
23 action.

24 IT IS FURTHER RECOMMENDED that petitioner’s application for a writ of habeas
25 corpus be dismissed.

26 These findings and recommendations are submitted to the United States District Judge
27 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
28 after being served with these findings and recommendations, petitioner may file written

1 objections with the court. Such a document should be captioned “Objections to Magistrate
2 Judge’s Findings and Recommendations.” If petitioner files objections, he shall also address
3 whether a certificate of appealability should issue and, if so, why and as to which issues. See 28
4 U.S.C. § 2253(c)(2). Petitioner is advised that failure to file objections within the specified time
5 may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th
6 Cir. 1991).

7 DATED: December 3, 2021

8 
9 ALLISON CLAIRE
10 UNITED STATES MAGISTRATE JUDGE
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28