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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LAMAR JOHNSON,

No. C 16-1373 WHA (PR)

Petitioner,

**ORDER DENYING PETITION AND
DENYING CERTIFICATE OF
APPEALABILITY**

v.

AUDREY KING, Executive Director
California Department of Mental
Health,

Respondent.

INTRODUCTION

Petitioner filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. 2254 challenging his civil commitment to Coalinga State Hospital pursuant to California's Sexually Violent Predators Act. *See* Cal. Welf. & Inst. Code § 6600, et seq. ("SVPA"). Respondent was ordered to show cause why the petition should not be granted. Respondent has answered, and petitioner has filed a traverse. For the reasons discussed below, the petition is **DENIED**.

STATEMENT

I. SVPA COMMITMENT PROCEEDINGS

The SVPA authorizes the state to file a petition to civilly commit a person as a sexually violent predator ("SVP"), which is someone who (1) has been convicted of a sexually violent offense and (2) suffers from a diagnosed mental disorder that makes it likely that he will engage in sexually violent criminal behavior in the future. *See* Cal. Welf. & Inst. Code § 6600(a)(1). The commitment petition must be filed while the individual is still in custody under a determinate prison term, as a result of parole revocation, or under a special SVPA-authorized

1 “hold” (§ 6601(a)(2)). After the petition is filed, the superior court must hold a probable cause
2 hearing, and then a jury trial at which a unanimous jury must find beyond a reasonable doubt
3 that the individual meets the criteria for an SVP (§§ 6602-03). Prior to 2006, an SVP was
4 committed for a two-year term but could be recommitted to an unlimited number of sequential
5 terms. In 2006, Proposition 83 was passed and now an SVP is committed to a state mental
6 hospital for an indeterminate term but with yearly reviews of their mental condition by a mental
7 health professional (§§ 6603(d), 6604, 6604.9(a)).

8 An SVP can seek release: (1) if the Department of State Hospitals (DSH) determines
9 that his or her mental disorder “has so changed that the person is not likely to commit acts of
10 predatory sexual violence while under supervision and treatment in the community” and
11 recommends conditional release, and the trial court makes a finding of conditional release after
12 a hearing; or (2) up to one time per year an SVP may petition the trial court for conditional
13 release without DSH concurrence, and the court must hold a hearing if the petition is not
14 frivolous (§§ 6607, 6608). The trial court determines conditional release based upon the same
15 standard used for the initial commitment (§ 6608(g)). The burden is on the SVP to prove by a
16 preponderance of the evidence that he meets that standard, i.e. that it is unlikely that he will
17 “engage in sexually violent criminal behavior due to his or diagnosed mental disorder if under
18 supervision and treatment in the community” (§ 6608(g),(k)). However, if the DSH issues a
19 report recommending conditional release, then the burden is on the state to prove by a
20 preponderance of the evidence that the SVP should not be released (*ibid.*).

21 II. PETITIONER’S COMMITMENT PROCEEDINGS

22 In 1984, petitioner pleaded guilty to assault with intent to commit rape of a 24-year-old
23 woman. Before he was sentenced, in yet another crime he raped a 15-year-old girl and later
24 pled guilty to statutory rape. He was imprisoned for these two crimes and released on parole in
25 1985. In 1992, he was convicted of two counts of rape, assault with intent to commit sodomy,
26 forcible oral copulation, and assault with intent to commit rape. He was sentenced to a term of
27 36 years in state prison. After serving over 17 years, his date for release on parole was set for
28 June 28, 2011.

1 Before petitioner's release from prison, prosecutors petitioned for his civil commitment
2 as an SVP. At a jury trial in 2012, four psychologists testified as experts. The state's experts,
3 Drs. Padilla and D'Orazio diagnosed petitioner with "paraphilia not otherwise specified with
4 non-consenting persons," also known as "paraphilic coercive disorder." This disorder is
5 marked by sexual arousal or gratification involving nonconsenting persons persistent over a six-
6 month period. The experts diagnosed petitioner with this disorder because of the number of
7 petitioner's offenses over a lengthy period of time, the similar modus operandi, the fact that a
8 consenting partner was available to him, he showed quick recidivism when he was not in
9 custody, and his continued arousal while the victims resisted. Based upon a statistical analysis,
10 they predicted a 21 to 28 percent chance that he would commit another sexual offense within 10
11 years if released into the community. Petitioner's first expert, Dr. Abbot, testified that the
12 existence of paraphilic coercive disorder was rare and there was no consensus as to its
13 definition in the psychology community. Dr. Abbot opined that petitioner did not have the
14 disorder and instead was an "anger" rapist, that there was a six percent chance he would re-
15 offend if released, and that he did not pose a well-founded risk he would re-offend. Dr. Heard
16 testified for petitioner as well. He testified that paraphilic coercive disorder did not exist, that
17 petitioner raped out of anger, and that he did not have a mental disorder that would compel him
18 to re-offend. He estimated based upon petitioner's age less than a seven percent chance that he
19 would re-offend if released into the community.

20 Following the jury's verdict, petitioner's appeal and habeas petitions to the California
21 Court of Appeal were denied in a joint opinion that was published in part. His petition for
22 review to the California Supreme Court was summarily denied.

23 ANALYSIS

24 I. STANDARD OF REVIEW

25 Pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), a
26 federal court may entertain a petition for writ of habeas corpus "in behalf of a person in custody
27 pursuant to the judgment of a State court only on the ground that he is in custody in violation of
28 the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). The petition may

1 not be granted with respect to any claim adjudicated on the merits in state court unless the state
2 court's adjudication of the claim: "(1) resulted in a decision that was contrary to, or involved an
3 unreasonable application of, clearly established Federal law, as determined by the Supreme
4 Court of the United States; or (2) resulted in a decision that was based on an unreasonable
5 determination of the facts in light of the evidence presented in the State court proceeding." 28
6 U.S.C. § 2254(d).

7 "Under the 'contrary to' clause, a federal habeas court may grant the writ if the state
8 court arrives at a conclusion opposite to that reached by [the United States Supreme] Court on a
9 question of law or if the state court decides a case differently than [the] Court has on a set of
10 materially indistinguishable facts." *Williams (Terry) v. Taylor*, 529 U.S. 362, 412-13 (2000).

11 "Under the 'unreasonable application' clause, a federal habeas court may grant the writ if the
12 state court identifies the correct governing legal principle from [the] Court's decisions but
13 unreasonably applies that principle to the facts of the prisoner's case." *Id.* at 413. "[A] federal
14 habeas court may not issue the writ simply because that court concludes in its independent
15 judgment that the relevant state-court decision applied clearly established federal law
16 erroneously or incorrectly. Rather, that application must also be unreasonable." *Williams*, 529
17 U.S. at 411. A federal habeas court making the "unreasonable application" inquiry should ask
18 whether the state court's application of clearly established federal law was "objectively
19 unreasonable." *Id.* at 409. The state court opinion reviewed under Section 2254(d) in this case
20 is the opinion of the California Court of Appeal because the California Supreme Court denied
21 petitioner's claims in a summary opinion without explanation.

22 II. CLAIMS FOR RELIEF

23 1. Claims One and Two

24 After the judgment committing petitioner under the SVPA, the American Psychiatric
25 Association released a new edition of the Diagnostic and Statistic Manual ("DSM") that no
26 longer included the kind of paraphilic coercive disorder used for petitioner's diagnosis. In his
27 first claim, petitioner argues that because of this development, his commitment was based upon
28 an invalid diagnosis which violated his right to due process. In his second claim, he argues that

1 the expert testimony diagnosing him with that disorder constituted “false” evidence.

2 The later removal of paraphilic coercive disorder from the DSM does not mean that his
3 commitment violates his right to due process. The Court of Appeal correctly found that the
4 “federal constitutional right to due process does not require an SVP commitment to be based on
5 a disorder that is uniformly recognized by the mental health community.” *People v. Johnson*,
6 Nos. A136573, A140310, A143775, slip op. at 21 (Cal. Ct. App. Mar. 13, 2015), *as amended*,
7 slip op. 1-2 (Cal. Ct. App. Apr. 7, 2015). States may, in defining who may be civilly
8 committed, employ mental health categories that “do not fit precisely with the definitions
9 employed by the medical community.” *Kansas v. Hendricks*, 521 U.S. 346, 359 (1997). The
10 scientific debate over paraphilic coercive disorder, including its exclusion from the DSM, does
11 not mean that the diagnosis is “too imprecise a category” such that commitment of an individual
12 as an SVP based on such a diagnosis runs afoul of due process. *McGee v. Bartow*, 593 F.3d
13 556, 570, 581 (7th Cir. 2010) (citing *Hendricks*, 521 U.S. at 373) (“we cannot conclude that the
14 diagnosis of a [paraphilic coercive disorder] is so empty of scientific pedigree or so
15 near-universal in its rejection by the mental health profession that civil commitment cannot be
16 upheld as constitutional when this diagnosis serves as a predicate”).

17 The California Court of Appeal correctly concluded that even if the latest edition of the
18 DSM “reflects a growing skepticism in the psychiatric community about paraphilic coercive
19 disorder (a.k.a. paraphilia non-consent), we cannot conclude that a commitment based on that
20 disorder violates due process.” *Johnson*, slip op. at 23. California does not define an SVP in
21 lock-step with mental disorders recognized by the DSM. The assessment of an SVP is based
22 upon “diagnosable mental disorders, as well as various factors known to be associated with the
23 risk of reoffense among sex offenders, including criminal and psychosexual history, type
24 degree, and duration of sexual deviance, and severity of mental disorder.” *Reilly v. Superior*
25 *Court*, 57 Cal. 4th 641, 647 (2013) (quoting California Welfare and Institutions Code Section
26 6601(c)) (internal quotations omitted). For the persuasive reasons discussed in *McGee* and the
27 Court of Appeal in this case, the disagreement between the doctors who found petitioner to be
28 an SVP on the one hand, and petitioner’s experts and the later edition of the DSM on the other,

1 does not mean that petitioner’s commitment violates his right to due process.

2 In addition, the prosecution experts’ diagnosis of petitioner was an opinion that cannot
3 be considered “false evidence.” As the Ninth Circuit has explained, when new expert testimony
4 contradicts expert testimony for the prosecution that was presented at trial, the trial testimony is
5 “simply a difference in opinion — not false testimony.” *See Gimenez v. Ochoa*, 821 F.3d 1136,
6 1142-43 (9th Cir. 2016); *see also Odle v. Calderon*, 65 F.Supp.2d 1065, 1073 (N.D. Cal. 1999).
7 The Court of Appeal correctly found that the professional disagreement on the validity of
8 paraphilic coercive disorder does not mean that the prosecution’s expert testimony was “false,”
9 only that it was disputed. Accordingly, the revision of the DSM after trial did not result in a
10 violation of due process or a verdict based upon “false” evidence.

11 The state courts’ rejection of the first and second claims was neither “contrary to” nor an
12 “unreasonable application” of federal law within the meaning of AEDPA. Petitioner may not
13 receive federal habeas relief on these claims.

14 2. Claim Three

15 Petitioner claims that the jury instruction given pursuant to CALCRIM No. 3454
16 lowered the prosecution’s standard of proof. The instruction at issue stated:

17 The petition alleges that Lamar Johnson is a sexually violent
18 predatory. To prove this allegation, the People must prove beyond a
19 reasonable doubt that he has been convicted of committing sexually violent
20 offenses against one or more victims[, h]e has a diagnosed mental disorder,
and as a result of that diagnosed mental disorder, he is a danger to the
health and safety of others because it is likely that he will engage in
sexually violent predatory criminal behavior . . .

21 A person is likely to engage in sexually violent predatory criminal
22 behavior if there is a substantial danger that is a serious and well-founded
23 risk that the person will engage in such conduct if released in the
community. The likelihood that the person will engage in such conduct
does not have to be greater than 50 percent.

24 *Johnson*, slip op. at 12; Vol. 7 RT 689-90.

25 To begin with, the federal right to due process does not require proof beyond a
26 reasonable doubt in civil commitment proceedings. *Paddington v. Texas*, 441 U.S. 418, 432
27 (1979). Therefore, any failure to set forth such a standard of proof would not in and of itself
28 violate due process. California has chosen to use a beyond-the-reasonable-doubt standard in

1 civil commitment proceedings, and due process does require that instructions correctly set forth
2 state law. To show such a violation, petitioner would have to show both that the instruction was
3 ambiguous and a "reasonable likelihood" that the jury applied the instruction in a way relieved
4 the state of its burden of proving every element beyond a reasonable doubt. *Waddington v.*
5 *Sarausad*, 555 U.S. 179, 190-191 (2009). This instruction was neither ambiguous nor did it
6 lower the burden of proof. According to petitioner, the instruction's second paragraph confused
7 the jury into thinking that the state's burden was not to prove every element of the offense true
8 beyond a reasonable doubt, but rather that it could prove the likelihood of re-offense element by
9 less than a preponderance of the evidence (Pet. 12). The *existence* of a "likelihood" of
10 reoffense is an element of the offense, which the instruction clearly stated in the first paragraph
11 must be proven true beyond a reasonable doubt. The second paragraph of the instruction simply
12 specified the *extent* of the likelihood necessary to amount to a "likelihood" for purposes of the
13 SVP determination. That is, where as here the state's evidence placed the likelihood at between
14 15 and 25 percent chance of re-offense, the state still had to prove beyond a reasonable doubt
15 that such a level of likelihood existed. The California Court of Appeal's conclusion that there
16 was no "reasonable likelihood" the jury applied the instruction in an impermissible manner —
17 *i.e.*, to lower the prosecution's burden to prove every element of an SVP determination true
18 beyond a reasonable doubt — was both a reasonable application of and not contrary to federal
19 law. *See Johnson*, slip op. at 13-14. Accordingly, federal habeas relief is not warranted on this
20 claim.

21 3. Claim Four

22 Petitioner claims that the failure of the trial court to instruct the jury that he was
23 presumed not to be an SVP violated the California Constitution. The trial court rejected
24 petitioner's argument that the SVPA and the California Constitution required an instruction that
25 he is presumed not to be an SVP until proven otherwise. The California Court of Appeal found
26 that the trial court did not err under state law. *Johnson*, slip op. at 16.

27 Federal habeas relief cannot be granted based upon petitioner's claim that the trial court
28 violated the California Constitution because the federal habeas writ is unavailable for violations

1 of state law or for alleged error in the interpretation or application of state law. *Swarthout v.*
2 *Cooke*, 131 S.Ct. 859, 861-62 (2011). The California Court of Appeal’s conclusion, moreover,
3 that state law did not require an instruction on the presumption of innocence is binding here.
4 *Hicks v. Feiock*, 485 U.S. 624, 629-30 n.3 (1988) (state court’s interpretation of state law,
5 including one announced on direct appeal of challenged conviction, binds federal court sitting
6 in habeas corpus). And finally, even if petitioner claimed a violation of the federal right to due
7 process, AEDPA requires “clearly established” United States Supreme Court in order to grant
8 federal habeas relief. There is no such precedent; indeed, the Supreme Court has enumerated
9 the requirements of due process in civil commitment proceedings, and a presumption of
10 innocence is not one of the requirements. *See Vitek v. Jones*, 445 U.S. 480, 491-96 (1980); *cf.*
11 *Kentucky v. Whorton*, 441 U.S. 786, 789 (1979)) (federal constitution does not require an
12 instruction on the presumption of innocence in criminal proceedings).

13 Accordingly, petitioner is not entitled to federal habeas relief on this claim.

14 4. Claim Five

15 Petitioner claims that the jury’s verdict was not supported by sufficient evidence. After
16 AEDPA, sufficiency of evidence claims in federal habeas petitions are subject to a “twice-
17 deferential standard.” *Parker v. Matthews*, 132 S. Ct. at 2152 (2012) (per curiam). First, relief
18 must be denied if, viewing the evidence in the light most favorable to the prosecution, there was
19 evidence on which “any rational trier of fact could have found the essential elements of the
20 crime beyond a reasonable doubt.” *Ibid.* (citing *Jackson v. Virginia*, 443 U.S. 307, 319, 324
21 (1979)). Second, a state court decision denying a sufficiency challenge may not be overturned
22 on federal habeas unless the decision was “objectively unreasonable.” *Ibid.* (citing *Cavazos v.*
23 *Smith*, 132 S. Ct. 2, 4 (2011)). A federal court does not determine whether it is satisfied that the
24 evidence established guilt beyond a reasonable doubt. *Payne v. Borg*, 982 F.2d 335, 338 (9th
25 Cir. 1992). Only if no rational trier of fact could have found proof of guilt beyond a reasonable
26 doubt has there been a due process violation. *Jackson*, 443 U.S. at 324.

27 Petitioner argues there was insufficient evidence to support the jury’s SVP finding
28 because the prosecution’s experts did not base their diagnosis of him upon current

1 psychological symptoms or recent behaviors, and their diagnosis relied upon factors
2 contradicted by facts. He cites the facts that his last sexual assault was in 1992, he was never
3 found with coercive sexual pornography, he did not talk about wanting to coerce sex, and he
4 had regular consensual sex with his wife.

5 To prove that a defendant is an SVP, the state need not offer proof of a recent act while
6 the person is in custody. Cal. Welf. & Inst. Code § 6600(d). Rather, the state must show
7 “recent objective indicia of a defendant’s condition and a recent objective basis for a finding
8 that an inmate is likely to reoffend.” *Johnson*, slip op. at 8 (quoting *People v. Buffington*, 74
9 Cal.App.4th 1149, 1161 (1999)).

10 In rejecting petitioner’s claim, the California Court of Appeal carefully explained why
11 the evidence was sufficient for a rational juror to find he was an SVP. The state’s experts’
12 qualifications were not disputed, and they testified that petitioner currently had the disorder, not
13 just that he had it in the past. Moreover, Dr. D’Orazio testified that people with the disorder do
14 not typically act out while in custody — as petitioner has been since 1992 — and can manifest
15 again after a latent period. In addition, Dr. Padilla testified that the disorder could not be cured,
16 only managed, which petitioner was not doing effectively because he did not accept full
17 responsibility for having committed rape. Both experts also applied an actuarial method to
18 determine his “likelihood” of reoffending, which, under state law, need not be greater than 50
19 percent. Rather, under the SVPA, the likelihood of re-offense must be simply a “serious or
20 well-founded risk.” A rapist with 15-25 percent chance of raping again when released into the
21 community could rationally be considered a “serious” risk to that community given the gravity
22 and serious harm a rape causes.

23 Furthermore, petitioner shared characteristics with others with the disorder, including
24 the number of victims, the long history of sexual violence spanning ten years, his rapid
25 recidivism upon his release from custody, his advance planning of the assaults, his ability to
26 sustain sexual arousal despite the distress of his victims, and his use of more force than
27 necessary to gain compliance of the victims. Based upon this evidence, the jury could rationally
28 find recent objective indicia of the disorder because his lack of recent sexual assaults could

1 rationally be attributed to his incarceration, his disorder could be latent, he was not effectively
2 managing it, and he shared numerous characteristics of those with the disorder who were likely
3 to reoffend.

4 Petitioner argues that the jury could not have rationally believed the prosecution
5 experts' diagnoses of him with a disorder because he "has engaged in sex with 50 to 200 sexual
6 partners" and "is clearly able to achieve and maintain arousal even when coercion is not
7 present" (Pet. 14). This argument is not persuasive. As correctly noted by the Court of Appeal,
8 Dr. Padilla testified that people who have paraphilic coercive disorder can and do have
9 consensual sex in addition to coercive sex. And there is no evidence that a large number of
10 sexual partners diminishes the probability that someone will commit rape. Petitioner has not
11 shown why a rational juror could have found that his consensual sex precluded him from
12 suffering from a disorder that posed a current, serious and well-founded risk of reoffense if he
13 was free in the community.

14 Accordingly, petitioner's claim of insufficient evidence does not establish grounds for
15 federal habeas relief.

16 5. Claim Six, Seven and Eight

17 In his sixth claim, petitioner argues that the SVPA violates the Equal Protection Clause
18 because (1) it allows a trial court to summarily dismiss without a hearing a petition for release
19 on frivolous grounds (Cal. Welf. & Inst. Code § 6608), while the same cannot be done in other
20 civil commitment proceedings for Mentally Disordered Offenders ("MDO") and insanity
21 acquittals ("NGI") (Cal. Pen. Code §§ 1026 et seq., 2960 et seq.), and (2) SVPs are committed
22 for indeterminate terms with annual review in which they have the burden of proof seeking
23 release (Cal. Welf. & Inst. Code § 6604) while MDOs and NGIs are only committed for one or
24 two years (Cal. Pen. Code §§ 1026.5(b)(8), 2970(b)). In his seventh claim, petitioner argues
25 that the SVPA violates due process because it commits SVPs to an indeterminate term with
26 annual review. In his eighth claim, he argues that the SVPA violates the Ex Post Facto Clause
27 Jeopardy Clause.

28 "The Equal Protection Clause of the Fourteenth Amendment commands that no State

1 shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is
2 essentially a direction that all persons similarly situated should be treated alike." *City of*
3 *Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985). Our court of appeals has found
4 that there is no clearly established Supreme Court precedent prohibiting treating SVPs
5 differently from MDOs and NGIs, finding them to be similarly situated, or applying any stricter
6 scrutiny to such differentiation than rational basis review. *Seeboth v. Allenby*, 789 F.3d 1099,
7 1105-06 (9th Cir. 2015) (SVPA does not violate equal protection even though it sets no time
8 limit for trial on whether detainee should be re-committed (for indefinite term), despite statutes
9 granting timing provision to other civilly-committed persons, such as mentally disordered
10 offenders and those not guilty by reason of insanity); *see also Taylor v. San Diego Cty.*, 800
11 F.3d 1164, 1171 (9th Cir. 2015) (California Court of Appeal did not unreasonably apply clearly
12 established federal law in determining that sexually violent predators are not similarly situated
13 to other civil committed individuals); *Litmon v. Harris*, 768 F.3d 1237, 1243 (9th Cir. 2014)
14 (SVPs are not similarly situated to MDOs, allowing them to be treated differently). The rational
15 basis from treating SVPs differently from MDOs and NGIs — who have been found mentally
16 ill and dangerous, but not sexually dangerous — is that a state may rationally determine that
17 sexually violent crime is “qualitatively more dangerous” than other violent crime. *Seeboth*, 789
18 F.3d at 1106. Based on this authority, the California Court of Appeal did not violate or
19 unreasonably apply clearly established Supreme Court precedent in holding that the SVPA does
20 not violate the Equal Protection Clause by treating SVPs differently from other civilly
21 committed persons. Accordingly, petitioner may not obtain federal habeas relief on this claim.

22 Petitioner claims that the SVPA violates due process because, after the initial
23 commitment trial at which the state must prove that the detainee is an SVP beyond a reasonable
24 doubt, the detainee has the burden to show he is no longer an SVP at annual petitions for release
25 from custody. Our court of appeals has rejected this claim for federal habeas relief under
26 AEDPA, holding that there is no clearly established Supreme Court authority prohibiting such
27 burden shifting for civil commitment proceedings. *Taylor v San Diego County*, 800 F.3d 1164,
28 1172 (9th Cir. 2015). Accordingly, the California Court of Appeal’s denial of petitioner’s due

1 process claim does not entitle him to federal habeas relief under AEDPA.

2 Petitioner claims that the SVPA violates the Ex Post Facto and Double Jeopardy
3 Clauses because the commitment term is an indeterminate term with annual review, a change
4 brought about by the passage of Proposition 83. When a prisoner is civilly committed after
5 completing his or her criminal sentence, the commitment does not violate the Double Jeopardy
6 or Ex Post Facto Clauses as long as the commitment statute does not establish criminal
7 proceedings. *See Kansas v. Hendricks*, 521 U.S. 346, 359-69 (1997) (finding Kansas SVP
8 proceedings not criminal). For purposes of its constitutionality, the SVPA is similar in all
9 relevant respects to the Kansas statute upheld in *Hendricks*, and as such the proceedings it
10 establishes are not criminal in nature. *See Hubbart v. Knapp*, 379 F.3d 773, 779-80 (9th Cir.
11 2004). The determination in *Hubbart* that SVPA’s commitment proceedings are not “criminal”
12 in nature under *Hendricks* is not altered by Proposition 83. *See Taylor*, 800 F.3d at 1171
13 (holding “[o]ur ruling in *Hubbart* remains the law of the circuit” after passage of Proposition
14 83). As SVPA proceedings are not criminal in nature, the California Court of Appeal’s
15 conclusion that petitioner’s commitment did not violate the Ex Post Facto or Due Process
16 Clauses was neither contrary to nor an unreasonable application of federal law under the
17 AEDPA.

18 **CONCLUSION**

19 The petition for a writ of habeas corpus is **DENIED** without prejudice. Petitioner has
20 failed to make a substantial showing that a reasonable jurist would find the denial of his claims
21 debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Consequently, no certificate
22 of appealability is warranted in this case.

23 The clerk shall enter judgment and close the file.

24 **IT IS SO ORDERED.**

25 Dated: July 11, 2017.

26 
27 _____
28 WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE