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

KENNETH GERALD TAYLOR, AB7038,)	
)	
Petitioner,)	No. C 17-3628 CRB (PR)
)	
vs.)	ORDER DISMISSING
)	PETITION FOR WRIT OF
JOEL MARTINEZ, Warden,)	HABEAS CORPUS AND
)	DENYING CERTIFICATE
Respondent.)	OF APPEALABILITY
)	
<hr style="width: 40%; margin-left: 0;"/>)	

Petitioner, a state prisoner currently incarcerated at the Sierra Conservation Center (SCC) in Jamestown, California, has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging a September 19, 2015 amendment of his original December 7, 2009 abstract of judgment from Alameda County Superior Court.

BACKGROUND

Petitioner was convicted by a jury in Alameda County Superior of two counts of second degree robbery. In a bifurcated proceeding, the court found true allegations that petitioner had suffered numerous prior convictions, including a prior strike felony conviction. On December 4, 2009, the court sentenced petitioner to a determinate term of 15 years in state prison.

Petitioner unsuccessfully appealed his conviction to, and unsuccessfully sought state habeas relief from, the California Court of Appeal. The Supreme Court of California denied review and, on November 16, 2011, denied his final petitions for state habeas relief.

1 Supreme Court of the United States; or (2) resulted in a decision that was based
2 on an unreasonable determination of the facts in light of the evidence presented
3 in the State court proceeding.” Id. § 2254(d).

4 The petition may be dismissed if it plainly appears from its face and any
5 exhibits annexed to it that the petitioner is not entitled to relief. Hendricks v.
6 Vasquez, 908 F.2d 490, 491 (9th Cir. 1990).

7 B. Legal Claims

8 Petitioner claims that Alameda County Superior Court did not have
9 jurisdiction to amend his original December 7, 2009 abstract of judgment, “and
10 that in so doing, he was subjected to double jeopardy and due process violation.”
11 Pet. (ECF No. 1) at 5a. Petitioner apparently believes that the superior court
12 could only reduce his sentence from 15 to 11 years in state prison. The claim is
13 meritless.

14 The petition and exhibits annexed to the petition show that, after petitioner
15 requested in May 2015 that Alameda County Superior Court correct his original
16 December 7, 2009 abstract of judgment, the superior court determined that the
17 original December 7, 2009 abstract of judgment needed to be corrected to
18 properly reflect how the court had arrived at petitioner’s total term of 15 years in
19 state prison. The December 7, 2009 abstract of judgment showed that the court
20 had arrived at the total term of 15 years in state prison by imposing a middle term
21 of six years for the first robbery count and a middle term of two years for the
22 second robbery count, plus seven years for the various prior convictions. It did
23 not mention petitioner’s prior strike felony conviction. The superior court found
24 that the abstract of judgment contained a “clerical error” because it did not
25 properly reflect how the court had arrived at the total term of 15 years in state
26 prison. The court accordingly instructed the clerk to correct the abstract of

1 judgment to reflect that it had arrived at the total term of 15 years in state prison
2 by imposing a middle term of three years for the first robbery count and a middle
3 term of one year for the second robbery count, both doubled by virtue of the prior
4 strike felony conviction (i.e., for a total term of eight years for the two robbery
5 counts), plus seven years for the various other prior convictions. There was no
6 change in petitioner's total term of 15 years in state prison.

7 The state courts' rejection of petitioner's claim that amending the original
8 abstract of judgment amounted to a constitutional violation was not contrary to,
9 or an unreasonable application of, clearly established Supreme Court precedent,
10 or involved an unreasonable determination of the facts. See 28 U.S.C. § 2254(d).
11 The superior court reasonably determined that the original abstract of judgment
12 contained a clerical error because it did not properly reflect how the court had
13 arrived at petitioner's total term of 15 years in state prison, and reasonably
14 ordered the clerk to correct it. The amended abstract of judgment did not result
15 in a double jeopardy or due process violation because it did not in any way
16 increase petitioner's total term of 15 years in state prison, which is amply
17 supported by the two counts and numerous priors (including a prior strike felony)
18 for which he was convicted. Cf. Walker v. Endell, 850 F.2d 470, 476 (9th Cir.
19 1987) (federal court generally may not review state sentence that is within
20 statutory limits). Petitioner is not entitled to federal habeas relief on his claim
21 that the amended abstract of judgment amounted to a constitutional violation.
22 See 28 U.S.C. § 2254(d).

23 CONCLUSION

24 For the foregoing reasons, the petition for a writ of habeas corpus is
25 DISMISSED for lack of merit.

26 Pursuant to Rule 11 of the Rules Governing Section 2254 Cases, a
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certificate of appealability (COA) under 28 U.S.C. § 2253(c) is DENIED because petitioner has not demonstrated that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” Slack v. McDaniel, 529 U.S. 473, 484 (2000).

SO ORDERED.

DATED: August 10, 2017



CHARLES R. BREYER
United States District Judge