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28UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DARCEL STONER,

Petitioner,

No. C 07-6385 PJH (PR)

vs.

**ORDER OF DISMISSAL**

J. HARTLEY, Warden,

Respondent.

This is a habeas case filed pro se by a state prisoner. Petitioner claimed in the original petition that his sentence violated his Sixth Amendment rights as established in *Cunningham v. California*, 127 S. Ct. 856 (2007), *Blakely v. Washington*, 542 U.S. 296 (2004), and *Apprendi v. New Jersey*, 530 U.S. 466 (2000), but because he did not provide any facts about what happened at sentencing, the petition was dismissed with leave to amend. Petitioner has amended.

In his amendment, petitioner says that on April 4, 2000, he pled guilty, pursuant to a plea bargain, to attempted murder with a gun enhancement. He says that he was sentenced to the upper term on the attempted murder charge. In *Cunningham*, the Supreme Court held that California's Determinate Sentencing Law violates a defendant's right to a jury trial to the extent that it contravenes "*Apprendi's* bright-line rule: Except for a prior conviction, 'any fact that increases the penalty for a crime beyond the statutory maximum must be submitted to a jury, and proven beyond a reasonable doubt.'" *Id.* (quoting *Apprendi*, 530 U.S. at 490). When a case involves a plea bargain, as here, ordinarily there would be an issue whether there was a waiver, but in this case the sole claim in the petition is barred on another ground.

