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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CORREY MITCHELL,
Petitioner,
v.
TRENT ALLEN,
Respondent.

Case No. [21-cv-06176-JST](#)

**ORDER GRANTING MOTION TO
DISMISS; DISMISSING PETITION
FOR A WRIT OF HABEAS CORPUS;
DENYING CERTIFICATE OF
APPEALABILITY**

Re: ECF No. 11

Petitioner, a state prisoner incarcerated at Salinas Valley State Prison,¹ filed this *pro se* action for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, arguing that the California Department of Corrections and Rehabilitation (“CDCR”) has extended his sentence from 205 years to life to a longer sentence of 251 years to life without authority. *See generally* ECF Nos. 1, 10. Respondent has filed a motion to dismiss. ECF No. 11. Petitioner has filed an opposition, ECF No. 13, and Respondent has filed a reply, ECF No. 15. For the reasons set forth below, the Court GRANTS the motion to dismiss.

BACKGROUND

I. Petitioner’s Underlying Conviction and Sentence

On March 24, 2004, Petitioner was convicted in Los Angeles County Superior Court of robbery (Cal. Penal Code § 211); carjacking (Cal. Penal Code § 236); assault on an officer with a semi-automatic firearm (Cal. Penal Code § 245(b); and fleeing from an officer’s pursuit (Cal. Penal Code § 2800.2(a)). ECF No. 1-1 at 11. Pursuant to the Three Strikes Law, Petitioner was

¹ In accordance with Habeas Rule 2(a) and Rule 25(d)(1) of the Federal Rules of Civil Procedure, the Clerk of the Court is directed to substitute Warden Trent Allen as Respondent because he is Petitioner’s current custodian.

1 sentenced to a term of 207 years to life with the possibility of parole. ECF No. 11 at 17-18, 74-76.

2 On April 6, 2016, a CDCR analyst revised Petitioner’s CDCR legal status summary to
3 reflect a sentence of 251 years to life, stating “Per M/O and AOJ total term is 207 years to life but
4 error in calculation. Inmate was sentenced as a 3rd striker total term should be 251 years to life.
5 Entered into SOMS according to 3rd striker.” ECF No. 13 at 16-17, 50.

6 **II. Procedural Background**

7 On or about August 10, 2021, Petitioner commenced this action by filing the instant
8 petition for a writ of habeas corpus. ECF No. 1. On August 30, 2021, the Court screened the
9 petition and found that the petition alleged that Petitioner’s primary offense was the non-violent
10 crime of assault with a firearm (Cal. Penal Code § 245(d)(2)), and that the petition claimed that
11 the failure to grant Petitioner a Proposition 57 parole hearing therefore violated the federal Equal
12 Protection Clause and Petitioner’s state constitutional right to due process. ECF No. 7 at 1-2. The
13 Court dismissed the petition for lack of habeas corpus jurisdiction, finding that success on this
14 claim would not shorten or end Petitioner’s sentence because eligibility for a Proposition 57 parole
15 hearing would not necessarily result in Petitioner’s immediate release from prison in that
16 Petitioner could be denied parole at the hearing. ECF No. 7 at 2.

17 Petitioner filed a motion for reconsideration of the dismissal, arguing that the Court only
18 considered one of his three claims for federal habeas relief. ECF No. 9. On November 16, 2022,
19 the Court granted Petitioner’s motion for reconsideration, vacated the Order of Dismissal and
20 related judgment, and reopened the case. ECF No. 10. The Court found that the petition stated
21 three cognizable claims for relief. In addition to the Proposition 57 claim dismissed by the Court,
22 the petition also presented the following two claims: (1) the CDCR had changed Petitioner’s
23 sentence without authority and (2) Petitioner’s abstract of judgment and minute order were both in
24 error. ECF No. 10 at 2-3. The Court dismissed the latter claim with prejudice because the claim
25 involved a state procedural error that had no bearing on the fundamental fairness of the trial and
26 the error did not violate any federal constitutional or statutory provision. ECF No. 10 at 3. The
27 Court found that, liberally construed, the claim that the CDCR increased Petitioner’s sentence
28 without authority stated a cognizable federal habeas claim, and ordered Respondent to file an

1 answer. ECF No. 10 at 4.

2 **DISCUSSION**

3 **I. Motion to Dismiss**

4 Respondent argues that this habeas petition should be dismissed because (1) any error in
5 the legal status summary, the abstract of judgment, or the minute order is a matter of state law;
6 (2) the petition does not invoke habeas corpus jurisdiction because success on Petitioner’s claim
7 will not necessarily spell speedier release; and (3) the petition is untimely. *See generally* ECF
8 Nos. 11, 15.

9 In opposition, Petitioner argues that the petition invokes the Court’s federal habeas
10 jurisdiction because the August 17, 2004 re-sentencing violated the Fifth Amendment’s
11 prohibition on double jeopardy. Petitioner argues that the petition is timely because he was not
12 certain he could not bring this claim until February 18 or 27, 2019, when he received, for the first
13 time, a copy of his August 17, 2004 sentencing transcript, and could conclusively prove that the
14 minute order and abstract of judgment were incorrect; and that he is entitled to tolling of the
15 limitations period from July 17, 2019 to April 22, 2020, when he was exhausting administrative
16 remedies for this claim, and from October 24, 2020 to July 14, 2021, when he was exhausting his
17 state court remedies. Petitioner further argues that the California Supreme Court found his
18 petition to be timely on October 25, 2019, and notes that *In re Mohammad* was not decided until
19 January 3, 2022.

20 **II. Analysis**

21 The Court agrees that Petitioner’s claim alleging that the CDCR has incorrectly calculated
22 his sentence fails to state a cognizable federal habeas claim. Federal courts lack habeas
23 jurisdiction over claims by state prisoners that are not within “the core of habeas corpus.” *Nettles*
24 *v. Grounds*, 830 F.3d 922, 927, 934 (9th Cir. 2016). A prisoner’s claims are within the core of
25 habeas corpus if they challenge the fact or duration of his conviction or sentence. *Id.* at 934.
26 “[W]hen a prisoner’s claim would not ‘necessarily spell speedier release,’ that claim does not lie at
27 ‘the core of habeas corpus,’ and may be brought, if at all, under § 1983.” *Skinner v. Switzer*, 562
28 U.S. 521, 534 n.13 (2011) (citing *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005)); *Nettles*, 830 F.3d

1 at 934. Petitioner has been sentenced to an indeterminate term with the possibility of parole, with
2 a specified minimum term that he must serve before he is eligible for parole. *See* Cal. Penal Code
3 § 667(e)(2)(A). The CDCR’s change to Petitioner’s sentence was a change to his minimum
4 eligible parole date, not to Petitioner’s overall sentence. Accordingly, Petitioner’s claim is more
5 accurately described as challenging whether the CDCR correctly calculated the minimum term
6 that he must serve before he is eligible for parole. Whether the minimum term has been correctly
7 calculated will not necessarily “spell speedier release” because California prisoners serving
8 indeterminate sentences may be released from prison only upon the parole authority’s
9 determination that they are suitable for parole, which depends on assessment of a number of
10 factors probative of the risk to public safety. *See* 15 Cal. Code Regs. § 2281; *In re Lawrence*, 44
11 Cal.4th 1181, 1202–03 (2008). In other words, whether Petitioner’s term is 191 years to life, 207
12 years to life, or 251 years to life, Petitioner will be released only when the parole board deems him
13 suitable for parole.² Accordingly, Petitioner’s success on the claim that the CDCR erred in
14 calculating his sentence as 251 years to life would not necessarily shorten his sentence and does
15 not invoke federal habeas jurisdiction. *Nettles*, 830 F.3d at 934-35.

16 Petitioner argues that the Court has federal habeas jurisdiction because the August 17,
17 2004 re-sentencing violated the Fifth Amendment’s prohibition on double jeopardy. ECF No. 13
18 at 3-4. This argument was not raised in the petition. *See generally* ECF No. 1. To the extent that
19 Petitioner seeks leave to amend his petition to add a claim of double jeopardy, the Court DENIES
20 leave to amend because amendment would be futile. This claim appears to be unexhausted.
21 Petitioner has not presented this claim to the California Supreme Court. *See generally* ECF No. 1-
22 1 at 10-60 (state habeas petition filed in California Supreme Court on April 23, 2021 raising
23 claims in this petition); ECF No. 11 at 20-97 (state habeas petition filed in California Supreme
24 Court on August 6, 2019, alleging violation of equal protection and due process clauses because
25 Petitioner was not given proper consideration of his sentence, CDCR Secretary lacked authority
26 to execute judgment because judgment and minute order not properly entered, and ineffective

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28 ² Moreover, pursuant to the Elderly Parole Program, Petitioner is eligible for parole on March
2032, ECF No. 11 at 9, far earlier than the minimum terms at issue.

1 assistance of counsel). Pursuant to 28 U.S.C. § 2254(b), habeas relief may not be granted unless a
2 petitioner has exhausted his state remedies, which requires that the petitioner’s contentions be
3 fairly presented to the state courts and disposed of on the merits by the highest state court. *See* 28
4 U.S.C. § 2254(b); *see also James v. Borg*, 24 F.3d 20, 24 (1994).³

5 Because Petitioner’s claim does not invoke federal habeas jurisdiction, the Court declines
6 to address Respondent’s remaining arguments. The Court GRANTS Respondent’s motion to
7 dismiss on the grounds that the petition lacks federal habeas jurisdiction.

8 **CERTIFICATE OF APPEALABILITY**

9 The federal rules governing habeas cases brought by state prisoners require a district court
10 that issues an order denying a habeas petition to either grant or deny therein a certificate of
11 appealability. *See* Rules Governing § 2254 Case, Rule 11(a).

12 A judge shall grant a certificate of appealability “only if the applicant has made a
13 substantial showing of the denial of a constitutional right,” 28 U.S.C. § 2253(c)(2), and the
14 certificate must indicate which issues satisfy this standard. *Id.* § 2253(c)(3). “Where a district
15 court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c)
16 is straightforward: [t]he petitioner must demonstrate that reasonable jurists would find the district
17 court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S.
18 473, 484 (2000).

19 Here, Petitioner has not made such a showing, and, accordingly, a certificate of
20 appealability will be denied.

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26 ³ Petitioner also presents the following additional challenges to his sentence in his opposition.
27 Petitioner argues that when the CDCR increased his total term to 251 years to life on or about
28 August 28, 2019, the CDCR violated his due process rights and subjected him to both arbitrary
punishment and to cruel and unusual punishment. *See* ECF No. 13 at 1-4. To the extent that
Petitioner seeks leave to amend the petition to add these additional legal claims, the Court
DENIES leave to amend because these arguments also appear to be unexhausted. *See generally*
ECF No. 1-1 at 10-60; ECF No. 11 at 20-97.

1 **CONCLUSION**

2 For the reasons stated above, the Court orders as follows.

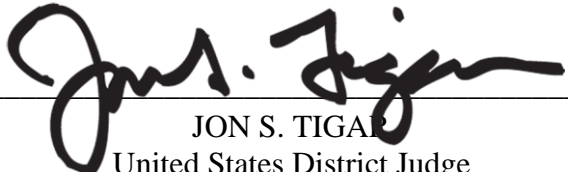
3 1. In accordance with Habeas Rule 2(a) and Rule 25(d)(1) of the Federal Rules of
4 Civil Procedure, the Clerk of the Court is directed to substitute Warden Trent Allen as Respondent
5 because he is Petitioner’s current custodian.

6 2. The Court GRANTS Respondent’s motion to dismiss, ECF No. 11; DISMISSES
7 the petition for a writ of habeas corpus for lack of federal habeas jurisdiction; and DENIES a
8 certificate of appealability. The Clerk shall enter judgment in favor of Respondent and close the
9 file.

10 This order terminates ECF No. 11.

11 **IT IS SO ORDERED.**

12 Dated: September 28, 2023

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15 JON S. TIGARD
16 United States District Judge
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United States District Court
Northern District of California