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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FRANCISCO MANZANO,
Petitioner,
v.
JAMES E. TILTON, Secretary of
California Department of Corrections
and Rehabilitation,
Respondent.

Civil No. 06cv2077 JAH(WMc)
**ORDER ADOPTING THE
MAGISTRATE JUDGE’S REPORT
AND RECOMMENDATION AND
DENYING PETITION FOR WRIT
OF HABEAS CORPUS**
[28 U.S.C. § 2254]

INTRODUCTION

Petitioner, a state prisoner proceeding *pro se*, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition has been fully briefed by all parties and, pursuant to 28 U.S.C. § 636(b)(1), the Honorable William McCurine, Jr., United States Magistrate Judge, has submitted a report and an amended report and recommendation to this Court recommending the instant petition be denied. No objections to the amended report were submitted within the time allotted for submission of objections. After careful consideration of the pleadings and relevant exhibits submitted by the parties, and for the reasons set forth below, this Court **ADOPTS** the magistrate judge’s report and amended report and **DENIES** the instant petition in its entirety.

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1 BACKGROUND

2 On April 7, 2003, petitioner was charged in an information with seven counts: one
3 count of residential burglary; one count of first degree burglary with a person present; one
4 count of kidnaping a person under the age of 14; three counts of making terrorist threats;
5 and one count of felon in possession of a firearm. After a jury trial, petitioner was
6 convicted on April 16, 2004 on three of the seven counts: one count of felon in possession
7 of a firearm and two counts of making terrorist threats. On June 10, 2004, petitioner was
8 sentenced to twenty-five years to life, after the trial court declined to dismiss two prior
9 strikes and after reducing the two felony terrorist threat counts to misdemeanors to be
10 served concurrently with the sentence imposed on the felony count. Petitioner appealed
11 his conviction and, on March August 2, 2005, the California Court of Appeal affirmed the
12 conviction. The California Supreme Court denied petitioner's petition for review on
13 October 18, 2005.

14 Petitioner filed the instant petition for writ of habeas corpus on September 21,
15 2006, alleging his sentence violates the prohibition against cruel and unusual punishments
16 guaranteed by the state and federal constitutions. Respondent filed an answer to the
17 petition on March 7, 2007. The magistrate judge issued a report and recommendation
18 on August 7, 2007 based on a review of the petition and respondent's answer. However,
19 this Court remanded the matter to the magistrate judge for further consideration after
20 petitioner indicated, in his objections to the report, that he had timely filed a traverse
21 which did not appear on the docket. Petitioner's traverse was then re-filed on January 3,
22 2008. After review of the now-complete record, the magistrate judge issued an amended
23 report and recommendation on February 12, 2008. Neither party filed objections to the
24 amended report.

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1 DISCUSSION

2 1. **Legal Standard**

3 The district court’s role in reviewing a magistrate judge’s report and
4 recommendation is set forth in 28 U.S.C. § 636(b)(1). Under this statute, the district
5 court “shall make a *de novo* determination of those portions of the report . . . to which
6 objection is made,” and “may accept, reject, or modify, in whole or in part, the findings
7 or recommendations made by the magistrate [judge].” *Id.* When no objections are filed,
8 the Court may assume the correctness of the magistrate judge’s findings of fact and decide
9 the motion on the applicable law. Campbell v. United States Dist. Court, 501 F.2d 196,
10 206 (9th Cir. 1974); Johnson v. Nelson, 142 F. Supp. 2d 1215, 1217 (S.D. Cal. 2001).
11 Under such circumstances, the Ninth Circuit has held that “a failure to file objections only
12 relieves the trial court of its burden to give *de novo* review to factual findings; conclusions
13 of law must still be reviewed *de novo*.” Barilla v. Ervin, 886 F.2d 1514, 1518 (9th Cir.
14 1989) (citing Britt v. Simi Valley Unified Sch. Dist., 708 F.2d 452, 454 (9th Cir. 1983)).

15 2. **Analysis**

16 The Court received no objections to the amended report and no request for an
17 extension of time in which to file any objections. As such, the Court assumes the
18 correctness of the magistrate judge’s factual findings and adopts them in full. The Court
19 has conducted a *de novo* review, independently reviewing the report and all relevant papers
20 submitted by both parties, and finds that the report provides a cogent analysis of the claim
21 presented in the instant petition. Specifically, this Court agrees with the magistrate judge
22 that petitioner’s sentence was not grossly disproportionate to the crimes charged
23 considering petitioner’s long history of convictions on both violent and non-violent crimes
24 and thus, the state court’s affirmation of petitioner’s conviction was neither contrary to,
25 nor an unreasonable application of clearly established Supreme Court law. *See Williams*
26 *v. Taylor*, 529 U.S. 362, 405-05 (2000); Lockyer v. Andrade, 538 U.S. 63, 73 (2003);
27 Clark v. Murphy, 331 F.3d 1062, 1067 (9th Cir. 2003).

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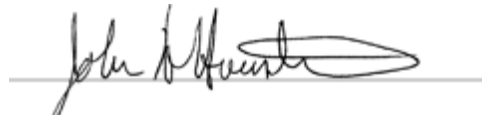
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CONCLUSION AND ORDER

For the reasons set forth above, **IT IS HEREBY ORDERED** that:

1. The findings and conclusions of the magistrate judge presented in the report and recommendation [doc. # 12] and the amended report and recommendation [doc. # 17] are **ADOPTED** in their entirety;
2. The instant petition is **DENIED** in its entirety.
3. The Clerk of Court shall enter judgment in accordance with this Order.

Dated: September 3, 2008



JOHN A. HOUSTON
United States District Judge