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6 UNITED STATES DISTRICT COURT
7 SOUTHERN DISTRICT OF CALIFORNIA
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9 CHARLES EDWARD BECKNER,) Case No. 08-CV-0482-BEN (JMA)
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11 Petitioner,) **REPORT AND RECOMMENDATION OF**
12) **UNITED STATES MAGISTRATE JUDGE**
13 v.) **ON PETITION FOR WRIT OF HABEAS**
14 MATTHEW M. MARTEL, Warden, et) **CORPUS**
15 al.)
16 Respondents.)
17

18 **I. Introduction**

19 Charles Edward Beckner ("Petitioner"), a state prisoner
20 proceeding pro se, filed a Petition for Writ of Habeas Corpus
21 [Doc. No. 1 ("Petition")] pursuant to 28 U.S.C. § 2254
22 challenging his conviction in San Diego Superior Court case
23 number SCE 267833. On September 10, 2007, Petitioner pled guilty
24 to commercial burglary, check forgery, and resisting arrest and
25 was sentenced to 32 months in state prison. (Lodgment Nos. 1-4.)
26 Petitioner contends that his Sixth Amendment right to a speedy
27 trial, his right to procedural due process, and his rights
28 guaranteed under Article I §§ 7 and 14 of the California
Constitution were violated when he was arrested and held from
January 8, 2007 to January 11, 2007 (for a total of 65 hours)

1 without appearing before a magistrate for arraignment. (Petition
2 at 6.) The Court has considered the Petition, Respondent's
3 Answer [Doc. No. 4], Petitioner's Traverse [Doc. No. 10], and all
4 the supporting documents submitted by the parties. Based upon
5 the documents and evidence presented in this case, and for the
6 reasons set forth below, the Court recommends that the Petition
7 be **DENIED**.

8 **II. Factual Background**

9 This Court gives deference to state court findings of fact
10 and presumes them to be correct. Petitioner may rebut the
11 presumption of correctness, but only by clear and convincing
12 evidence. 28 U.S.C. § 2254(e)(1); see also Parke v. Raley, 506
13 U.S. 20, 35-36 (1992) (holding findings of historical fact,
14 including inferences properly drawn from such facts, are entitled
15 to statutory presumption of correctness). The unique
16 circumstances of this case present the Court with limited state
17 court factual findings.¹ In addition to these state court
18 findings, the Court has reviewed the police report attached to
19 Petitioner's June 11, 2007 petition for writ of habeas corpus
20 filed in San Diego County Superior Court. (Lodgment No. 7 at
21 Exhibit C.) For the purpose of providing a factual background
22 only, the Court will refer to the police report in addition to
23 the state court findings.

24 The facts as found by the San Diego County Superior Court in
25 denying two of Petitioner's petitions for writs of habeas corpus

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27 ¹Petitioner did not appeal his conviction, but filed numerous
28 petitions for writs of habeas corpus in the state courts. All of
these state petitions were denied with little or no comment. The
orders denying these state petitions contain the only state court
factual findings available. (See Lodgment Nos. 5-22.)

1 are as follows:

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3 [¶] . . . [O]n January 8, 2007, Petitioner was arrested for
4 attempting to cash a stolen check. On January 11, 2007, a
5 complaint was filed charging Petitioner with burglary in
6 violation of Penal Code § 459, forgery of checks in
7 violation of Penal Code § 470(d), and resisting an executive
8 officer in violation of Penal Code § 69. Petitioner was
9 arraigned on the same day. . . .

10 (Lodgment No. 9 at 2.)²

11 The above-mentioned police report contains the following
12 additional information about Petitioner's arrest: On January 8,
13 2007, Petitioner entered a check cashing business and attempted
14 to cash a \$925.00 check. (Lodgment No. 7 at Exhibit C.)³ The
15 check had been previously reported stolen to the San Diego Police
16 Department. Id. at 1. When police officers arrived to
17 investigate at approximately 6:00 p.m., Petitioner fled on foot.
18 Id. Following a brief foot pursuit, Petitioner was arrested
19 after a struggle. Id. As a result of the pre-arrest struggle,
20 Petitioner sustained what appeared to the officers to be an
21 injury to his right elbow. Id. at 2. A medic arrived at the
22 scene and screened Petitioner. Id. He was then taken to the
23 police station for processing, where officers learned that he was

24 ²At the time of his arrest on the check forging incident, an
25 outstanding warrant for Petitioner's arrest existed arising out of
26 another case in which Petitioner pled guilty to one count of second
27 degree burglary, two counts of forgery, and one count of receiving
28 stolen property. (See Lodgment No. 22 at 2.) As a result of that
29 plea, on April 21, 2006, Petitioner was committed to the Department of
30 Corrections for a term of six years and four months, but the execution
31 of sentence was suspended. (See Lodgment No. 9 at 1.) The court then
32 granted Petitioner five years formal probation. Id. On December 1,
33 2006, the court summarily revoked probation and ordered a no-bail
34 arrest warrant issued. Id.

35 ³References to "Exhibit C" herein will indicate page numbers 1-4;
36 page number 1 referring to the first page of Exhibit C, and page
37 number 4 referring to the last page of Exhibit C.

1 wanted on an outstanding felony warrant. Id. Following
2 processing, Petitioner was transported to UCSD Medical Center,
3 where he was treated for a fractured right elbow before being
4 taken to San Diego Central Jail. Id.

5 **III. Procedural Background**

6 After his arrest on January 8, 2007, but prior to his guilty
7 plea and sentencing, Petitioner filed eight petitions for writs
8 of habeas corpus in California superior, appellate, and supreme
9 courts.⁴ These petitions raised numerous claims including: use
10 of unreasonable force, failure to hold a timely probable cause
11 hearing, and denial of the right to co-counsel. (See Lodgment
12 Nos. 5, 7, 10, 12, and 18.) In addition, three petitions
13 addressed the 65-hour detainment issue now before this Court.
14 (Lodgment Nos. 8, 14, and 16.)

15 In denying Petitioner's claim that the 65-hour detainment
16 warranted habeas relief, the San Diego Superior Court focused on
17 the fact that, even if Petitioner were properly arraigned within
18 48 hours as required by California law, he would not have been
19 released from custody because he was subject to the previously
20 issued no-bail arrest warrant. (Lodgment No. 9 at 3.) The
21 superior court concluded that, because Petitioner was at all
22 times in lawful custody, the failure to bring him before a
23 magistrate within the time prescribed by California law was not
24 grounds for reversing the conviction. Id. Upon receiving nearly
25 identical petitions challenging the 65-hour detainment, the
26 California Court of Appeal and the California Supreme Court

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28 ⁴Following sentencing on October 15, 2007, Petitioner filed two
additional petitions in state court pertaining to sentencing issues.
(Lodgment Nos. 20 and 21.)

1 denied them without comment. (Lodgment Nos. 15 and 17.)

2 After the denial of these state court petitions, Petitioner
3 pled guilty to all charges on September 10, 2007. (Lodgment Nos.
4 1-2.) On October 15, 2007, the trial court sentenced Petitioner
5 to two years, eight months in prison. (Lodgment Nos. 3-4.)
6 Petitioner filed a petition for writ of habeas corpus pursuant to
7 28 U.S.C. § 2254 in this Court on March 14, 2008. Respondent
8 filed an Answer on May 13, 2008 and petitioner filed a Traverse
9 (styled as a "Reply") on September 8, 2008. [Doc. No. 10]

10 **IV. Discussion**

11 **A. Standard of review**

12 Title 28, United States Code, § 2254(a), sets forth the
13 following scope of review for federal habeas corpus claims:

14 The Supreme Court, a Justice thereof, a circuit
15 judge, or a district court shall entertain an
16 application for a writ of habeas corpus on behalf of a
17 person in custody pursuant to the judgment of a State
18 court only on the ground that he is in custody in
19 violation of the Constitution or laws or treaties of
20 the United States.

21 28 U.S.C. § 2254(a) (emphasis added).

22 The current Petition is governed by the Anti-Terrorism and
23 Effective Death Penalty Act of 1996 ("AEDPA"). See Lindh v.
24 Murphy, 521 U.S. 320 (1997). As amended, 28 U.S.C. § 2254(d)
25 reads:

26 (d) An application for a writ of habeas corpus on
27 behalf of a person in custody pursuant to the judgment
28 of a State court shall not be granted with respect to
any claim that was adjudicated on the merits in State
court proceedings unless the adjudication of the claim:

(1) resulted in a decision that was contrary
to, or involved an unreasonable application
of, clearly established Federal law, as
determined by the Supreme Court of the United
States; or

1 (2) resulted in a decision that was based on an
2 unreasonable determination of the facts in light
3 of the evidence presented in the State court
4 proceeding.

4 28 U.S.C. § 2254(d)(1)-(2) (emphasis added).

5 To obtain federal habeas relief, Petitioner must satisfy
6 either § 2254(d)(1) or § 2254(d)(2). See Williams v. Taylor, 529
7 U.S. 362, 403 (2000). The Supreme Court interprets § 2254(d)(1)
8 & (2) as follows:

9 Under the "contrary to" clause, a federal habeas court may
10 grant the writ if the state court arrives at a conclusion
11 opposite to that reached by this Court on a question of law
12 or if the state court decides a case differently than this
13 Court has on a set of materially indistinguishable facts.
14 Under the "unreasonable application" clause, a federal
15 habeas court may grant the writ if the state court
16 identifies the correct governing legal principle from this
17 Court's decisions but unreasonably applies that principle to
18 the facts of the prisoner's case.

15 Williams, 529 U.S. at 412-413; see also Lockyer v. Andrade, 538
16 U.S. 63, 73-74 (2003).

17 Where there is no reasoned decision from the state's highest
18 court, this Court "looks through" to the underlying appellate
19 court decision. Ylst v. Nunnemaker, 501 U.S. 797, 801-806
20 (1991). If the dispositive state court order does not "furnish a
21 basis for its reasoning," federal habeas courts must conduct an
22 independent review of the record to determine whether the state
23 court's decision is contrary to, or an unreasonable application
24 of, clearly established Supreme Court law. See Delgado v. Lewis,
25 223 F.3d 976, 982 (9th Cir. 2000) (overruled on other grounds by
26 Lockyer v. Andrade, supra, 538 U.S. at 75-76); accord Himes v.
27 Thompson, 336 F.3d 848, 853 (9th Cir. 2003). However, a state
28 court need not cite Supreme Court precedent when resolving claims

1 presented on direct or collateral review. Early v. Packer, 537
2 U.S. 3, 8 (2002). “[S]o long as neither the reasoning nor the
3 result of the state-court decision contradicts [Supreme Court
4 precedent,]” id., the state court decision will not be “contrary
5 to” clearly established federal law. Id.

6 **B. Petitioner’s Guilty Plea Bars His Claim**

7 Respondent contends that Petitioner’s guilty plea bars his
8 pre-trial delay claim. (Answer at 3.) Respondent is correct.
9 “When a criminal defendant has solemnly admitted in open court
10 that he is in fact guilty of the offense with which he is
11 charged, he may not thereafter raise independent claims relating
12 to the deprivation of constitutional rights that occurred prior
13 to the entry of the guilty plea.” Tollett v. Henderson, 411 U.S.
14 258, 267 (1973). In Mena v. New York, 423 U.S. 61, 63 (1975),
15 the Supreme Court clarified that the entry of a guilty plea “...
16 simply renders irrelevant those constitutional violations not
17 logically inconsistent with the valid establishment of factual
18 guilt and which do not stand in the way of conviction, if factual
19 guilt is validly established.”

20 Petitioner pled guilty to commercial burglary, check
21 forgery, and resisting arrest on September 10, 2007. (Lodgment
22 Nos. 1-2.) When he pled guilty, Petitioner initialed the
23 statement: “I have the right to a **speedy and public trial by**
24 **jury**. I now give up this right.” (Lodgment No. 1 at
25 1.) (emphasis in original). Petitioner does not allege a
26 connection between the 65-hour delay and the validity of his
27 guilty plea, but instead argues for relief based on the delay
28 alone. (See Petition at 6.) As a result, under Mena and

1 Tollett, Petitioner's guilt was validly established, and he is
2 not entitled to relief based on allegations of constitutional
3 deprivations arising from the 65-hour delay. In other words,
4 because Petitioner pled guilty to commission of the crimes
5 charged, he is precluded under U.S. Supreme Court law from
6 prevailing on claims related to alleged procedural errors.
7 Accordingly, the Court concludes that Petitioner's guilty plea
8 precludes federal habeas relief in Petitioner's case and recom-
9 mends that the Petition be denied on that basis.⁵

10 **C. Speedy Trial Clause**

11 Even if Petitioner's claim were not barred by his guilty
12 plea, he does not state a meritorious claim under the Speedy
13 Trial Clause of the Sixth Amendment. The Speedy Trial Clause of
14 the Sixth Amendment provides "... in all criminal prosecutions,
15 the accused shall enjoy the right to a speedy and public trial...
16 " United States v. Rodriguez-Moreno, 526 U.S. 275, 278 (1999).
17 "This guarantee is an important safeguard to prevent undue and
18 oppressive incarceration prior to trial, to minimize anxiety and
19 concern accompanying public accusation and to limit the
20 possibilities that long delay will impair the ability of an
21 accused to defend himself." United States v. Ewell, 383 U.S.
22 116, 120 (1966). Determining whether a Sixth Amendment speedy

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24 ⁵For the first time, in his Reply/Traverse, Petitioner contends
25 that "his plea was coerced and involuntary. Specifically, he was
26 provided an advocate of the prosecution disguised as a public defender
27 who refused to be his advocate and forced him to take a plea he did
28 not understand" (Reply/Traverse at 5-7.) Petitioner is
precluded from raising new grounds for relief in his Reply/Traverse
that were not asserted in the Petition (see Order Requiring Response
to Petition [doc. no. 3] at 2-3), and the Court will therefore not
consider Petitioner's contention. In any event, it appears that any
claim that Petitioner's plea was involuntary lacks merit on its face.
(See Lodgment No. 1.)

1 trial violation occurred involves the evaluation of at least four
2 factors, including: (1) length of delay; (2) the reason for the
3 delay; (3) the defendant's assertion of his right; and (4)
4 prejudice to the defendant. Barker v. Wingo, 407 U.S. 514, 530
5 (1972).

6 Petitioner alleges that his Sixth Amendment right to a
7 speedy trial was violated when he was arrested and held from
8 January 8, 2007 to January 11, 2007 (for a total of 65 hours)
9 without appearing before a magistrate for arraignment. (Petition
10 at 6.) In making this contention, Petitioner implies that the
11 Speedy Trial Clause of the Sixth Amendment requires that
12 arraignments be held within a prescribed time period. See id.
13 Petitioner is mistaken.

14 In a petition for writ of habeas corpus to the California
15 Supreme Court, Petitioner attached a copy of the arraignment
16 procedures mandated under California law. (Lodgment No. 16 at 6-
17 10.) These procedures include California Penal Code § 825
18 (hereafter "Penal Code § 825"), which requires that arraignments
19 be held within two calendar days after arrest (excluding Sundays
20 and holidays). Id. Petitioner then stated:

21 [¶] Petitioner in this case was brought before a magistrate
22 for arraignment a total of 65 hours after his arrest. A
23 direct violation of petitioner[']s 6th Amendment right of
the United States constitution[']s right to a speedy trial;
and also a direct violation of procedural due process.

24 (Id. at 4.)

25 The above statement indicates that Petitioner contends that
26 a violation of Penal Code § 825 necessarily implicates a
27 violation of the Sixth Amendment Speedy Trial Clause. Petitioner
28 is incorrect in this conclusion. The Speedy Trial Clause of the

1 Sixth Amendment and Penal Code § 825 function entirely
2 independently and separately. Thus, a violation of Penal Code §
3 825 does not automatically trigger a violation of the Sixth
4 Amendment's right to a speedy trial.

5 The Sixth Amendment Speedy Trial Clause does not warrant
6 relief in Petitioner's situation. ". . . . [T]he right to speedy
7 trial is a more vague concept than other procedural rights. It
8 is, for example, impossible to determine with precision when the
9 right has been denied. We cannot definitely say how long is too
10 long in a system where justice is supposed to be swift but
11 deliberate." Barker v. Wingo, supra, 407 U.S. at 521. U.S.
12 Supreme Court analyses of the Sixth Amendment Speedy Trial Clause
13 address the delay between the time an individual is arrested,
14 indicted, or otherwise formally accused and the time when he or
15 she is brought to trial. The cases do not address Petitioner's
16 situation: an extremely limited delay occurring between arrest
17 and arraignment. See, e.g., Barker v. Wingo, supra, 407 U.S. at
18 514. Further, U.S. Supreme Court cases referencing Sixth
19 Amendment speedy trial claims involve substantial delay (i.e.,
20 months or years). Id. (five-year delay between arrest and trial
21 did not constitute a violation of the Speedy Trial Clause because
22 petitioner had not been prejudiced by the delay); cf., Doggett v.
23 United States, 505 U.S. 647, 652 (1992)(eight-year delay between
24 indictment and arrest constituted a violation of the Speedy Trial
25 Clause); Moore v. Arizona, 414 U.S. 25 (1973)(three-year delay
26 between charges filed and trial resulted in a remand to the state
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1 court for further factual findings).⁶

2 The Court is aware of no U.S. Supreme Court precedent
3 suggesting that the Speedy Trial Clause of the Sixth Amendment
4 prohibits a 65-hour delay between arrest and arraignment. In
5 addition, under the Barker analysis, the Court finds that the 65-
6 hour delay was minimal, that Petitioner did not assert his right
7 to be brought to trial (but instead sought dismissal of the
8 charges), and that Petitioner suffered no prejudice as a result
9 of the very short delay. Accordingly, the magistrate judge finds
10 that the California courts' denials of Petitioner's Sixth
11 Amendment claim were not unreasonable or contrary to clearly
12 established federal law as determined by the Supreme Court of the
13 United States and recommends that Petitioner's Sixth Amendment
14 claim be denied.

15 **D. Procedural Due Process**

16 Petitioner also appears to contend that the 65-hour hold
17 violated Penal Code § 825, and that this violation rises to the
18 level of a procedural due process violation. (Petition at 6.)
19 Respondent argues that the California courts reasonably rejected
20 Petitioner's claim because: (1) Penal Code § 825 is inapplicable
21 to a situation in which an arrestee is subject to a no-bail
22 arrest warrant; and (2) in any event, Petitioner cannot show
23 actual prejudice as a result of the delay. (Answer at 7-8.)

25 ⁶Respondent contends that Petitioner's right to a speedy trial
26 had not attached at the time of the 65-hour hold because he had not
27 yet been charged with a crime. (Answer at 7.) Because the magistrate
28 judge finds that Petitioner's claim fails outright, it is unnecessary
for the Court to reach this issue. However, the Court notes that the
U.S. Supreme Court has implied that the Speedy Trial Clause attaches
once a defendant is indicted, arrested, or "otherwise officially
accused." United States v. MacDonald, 456 U.S. 1, 6 (1982).

1 On June 13, 2007, Petitioner filed a petition for writ of
2 habeas corpus in San Diego County Superior Court. (Lodgment No.
3 8.) Petitioner claimed, inter alia, that the 65-hour hold
4 violated his due process rights. Id. at 3. In denying the
5 petition, the superior court stated:

6 [¶] With regards to the claim that Petitioner was not
7 arraigned in case number SCE 267833 within the required
8 statutory time period pursuant to Penal Code § 825,
9 Petitioner has not shown grounds for relief. At the time of
10 Petitioner's arrest for the crimes alleged in case number
11 SCE 267833, there was an outstanding warrant for
12 Petitioner's arrest arising out of case number SCD 196623.
13 The arrest warrant was a no bail warrant. Thus, at the time
14 of the arrest for the charges in case number SCE 267833,
15 Petitioner could not have been released from custody, as he
16 was subject to the no bail arrest warrant.

17 [¶] In the case of *People v. Imbler* (1962) 57 Cal.2d 711,
18 717, the court stated, "Defendant contends that his
19 conviction must be reversed because he was taken into
20 custody on January 14, 1961, but was not informed of the
21 charges against him until the following February 14.
22 Defendant was legally in custody during this time because he
23 had pleaded guilty to the robbery in Pomona. Although he
24 should have been taken before the magistrate on the murder
25 charge within the time limit prescribed in Penal Code
26 section 825, the failure to do so is not a ground for
27 reversing the conviction. (*Rogers v. Superior Court*, 46
28 Cal.2d 3, 9-10 [291 P.2d 929].)"

[¶] In *People v. Valenzuela* (1978) 86 Cal.App.3d 427, 431,
the court stated, "When prearraignment delay is urged as a
ground of reversal after conviction, the applicable rule is
that stated in *People v. Combes* (1961) 56 Cal.2d 135, 142
[14 Cal.Rptr. 4, 363 P.2d 4]: 'A violation of a defendant's
right to be taken before a magistrate within the time
specified by the law does not require a reversal unless he
shows that through such wrongful conduct he was deprived of
a fair trial or otherwise suffered prejudice as a result
thereof.'"

[¶] In the present case, Petitioner has not shown he
suffered any prejudice by the delay in arraigning him on the
charges in case number SCE 267833. Petitioner was also
being held on a no bail warrant arising out of an unrelated
incident. Thus, Petitioner would not have been released
from custody if he had been arraigned on an earlier date.
In addition, Petitioner has not shown that he will be
deprived of a fair trial due to the fact his arraignment did
not occur until January 11, 2007. . . .

1 (Lodgment No. 9 at 3-4.) The California Court of Appeal and
2 California Supreme Court denied the claim without comment.

3 (Lodgment Nos. 15 and 17.) Accordingly, this Court reviews the
4 decision of the superior court. Ylst v. Nunnemaker, supra, 501
5 U.S. at 801-806.

6 To warrant habeas relief, Petitioner must demonstrate that
7 the state court's decision was contrary to, or involved an
8 unreasonable application of, clearly established Federal law, as
9 determined by the Supreme Court of the United States. See 28
10 U.S.C. § 2254(d)(1). Thus, to the extent that Petitioner's
11 claims allege violations of Penal Code § 825 independent of
12 federal claims for relief, this court defers to and is bound by a
13 state court's interpretation of its own laws. Wainwright v.
14 Goode, 464 U.S. 78, 84 (1983).

15 In any event, California correctly applied its own law with
16 regard to Petitioner and his claims. The trial court reasonably
17 found that Petitioner had not shown that he was deprived of a
18 fair trial or suffered prejudice as a result of the 65-hour
19 delay. The delay was brief, Petitioner would not have been
20 released in any event based on the no-bail warrant, and he
21 ultimately pled guilty to the charges. Petitioner does not
22 allege a connection between the 65-hour hold and the validity of
23 his guilty plea. (Petition at 6.) Thus, there are no grounds
24 whatsoever to support a prejudice finding in this case. Thus,
25 the magistrate judge finds that the superior court properly
26 denied Petitioner's claim and recommends that Petitioner's
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1 procedural due process claim be denied.⁷

2 **V. Recommendation**

3 After a thorough review of the record in this matter, the
4 undersigned magistrate judge finds that Petitioner has not shown
5 that he is entitled to federal habeas relief under the applicable
6 legal standards. Therefore, the undersigned magistrate judge
7 hereby recommends that the Petition be **DENIED WITH PREJUDICE** and
8 that judgment be entered accordingly.

9 This Report and Recommendation is submitted to the Honorable
10 Roger T. Benitez, United States District Judge assigned to this
11 case, pursuant to the provisions of 28 U.S.C. § 636(b)(1).

12 **IT IS ORDERED** that not later than **October 15, 2008**, any
13 party may file written objections with the Court and serve a copy
14 on all parties. The document should be captioned "Objections to
15 Report and Recommendation."

16 **IT IS FURTHER ORDERED** that any reply to the objections shall
17 be served and filed not later than **October 29, 2008**. The parties
18 are advised that failure to file objections within the specified
19 time may waive the right to raise those objections on appeal of
20 the Court's order. See Turner v. Duncan, 158 F.3d 449, 455 (9th

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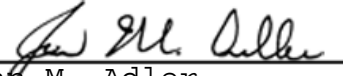
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25 ⁷Likewise, and lastly, Petitioner's claim that the 65-hour hold
26 violated California Constitution Art. I §§ 7 and 14 fails to justify
27 federal court intervention or habeas relief. (See Petition at 6.) As
28 noted previously, this Court defers to and is bound by a state court's
interpretation of its own laws, and where, as here, there is no
evidence whatsoever that Petitioner was denied a fair hearing on the
charges against him, this court will not second-guess state court
proceedings. See Wainwright v. Goode, 464 U.S. 78, 84 (1983).

1 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

2 **IT IS SO ORDERED.**

3 DATED: September 11, 2008

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5 Jan M. Adler
6 U.S. Magistrate Judge

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