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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 ATHANE SAVANGSENGOUTH,  
12  
13 vs. Petitioner,  
14 JAMES SCHOMIG, Warden,  
15 Respondent.

CASE NO. 09-CV-1978 H (PCL)  
ORDER DENYING  
PETITIONER'S WRIT OF  
HABEAS CORPUS AND  
ADOPTING REPORT AND  
RECOMMENDATION

16 Petitioner Athane Savangsengoutha, a California state prisoner proceeding pro se, filed  
17 a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 on September 9, 2009.  
18 (Doc. No. 1.) The California Supreme Court previously denied his habeas petition on April  
19 15, 2009. (Doc. No. 11.) Petitioner claims a violation of his Sixth and Fourteenth Amendment  
20 rights to a fair trial and due process because he claims the trial court failed to give a jury  
21 instruction requiring unanimity regarding the allegation that he used a knife in the commission  
22 of robbery. (Doc. No. 1.) Petitioner also alleges that the trial court abused its discretion in  
23 violation of state law in sentencing Petitioner to the upper limits and to consecutive terms  
24 based on the same aggravating factors. (Id.) On December 7, 2009, Respondent filed its  
25 opposition to Petitioner's motion, claiming that Petitioner does not allege a federal question  
26 or establish that the state court demonstrated an unreasonable application of federal law on  
27 either claim. (Doc. No. 11.) Petitioner did not file an objection to the report and  
28 recommendation. For the foregoing reasons, the Court denies Petitioner's petition.

## Discussion

### I. Legal Standard

In conducting habeas review, a federal court is limited to deciding whether the conviction violated the Constitution, law, or treaties of the United States. 28 U.S.C.A. § 2241. Estelle v. McGuire, 502 U.S. 62, 72–73 (1991). A federal court “shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to a judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). Only errors of federal law can support federal intervention in state court proceedings. Oxborrow v. Eikenberry, 877 F.2d 1395, 1400 (9th Cir. 1989) (holding that federal courts are not concerned with errors of state law unless they rise to the level of a constitutional violation). Federal courts are bound by the state’s interpretation of its own law. See Estelle v. McGuire, 502 U.S. at 67–68 (holding that federal courts may not reexamine state court determinations on state law questions); Jackson v. Ylst, 921 F.2d 882, 885 (9th Cir. 1990) (holding that federal courts “have no authority to review a state’s application of its own laws”).

Federal habeas petitions filed after April 25, 1996 are governed by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). See Lindh v. Murphy, 521 U.S. 320, 322–23 (1997). AEDPA establishes a “highly deferential standard for evaluating state-court rulings,” id. at 334 n.7, requiring that “state-court decisions be given the benefit of the doubt.” Woodford v. Visciotti, 537 U.S. 19, 24 (2002). The petitioner has the “burden of rebutting the presumption of correctness by clear and convincing evidence.” 28 U.S.C. § 2254(e)(1). A federal court can grant a prisoner habeas relief only if it determines the result of a claim adjudicated on the merits “was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States,” or “was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” 28 U.S.C. § 2254(d). A state court’s decision is contrary to clearly established federal law if it (1) applies a rule that contradicts governing Supreme Court authority, or (2) it “confronts a set of facts that materially indistinguishable from a relevant Supreme Court precedent and arrives at a” different result. Williams v. Taylor, 529 U.S. 362,

405 (2000) (citation omitted). To be found unreasonable, the application of the precedent “must have been more than incorrect or erroneous;” it “must have been ‘objectively unreasonable.’” Wiggins v. Smith, 539 U.S. 510, 520–21 (2003) (citation omitted); see also Williams, 529 U.S. at 409–10 (2000) (distinguishing an objectively unreasonable application from an incorrect application).

## **II. Jury Instruction Claim**

Petitioner claims that his Sixth and Fourteenth Amendment rights to a fair trial and due process were violated when the trial court failed to give a jury instruction requiring unanimity regarding the allegation that he used a knife in the commission of the crime. (Doc. No. 1.) The United States Supreme Court in Richardson v. U.S., 526 U.S. 813, 817 (1999), rejected Petitioner’s due process argument. Specifically, the Court held,

Where, for example, an element of robbery is force or threat of force, some jurors might conclude that the defendant used a knife to create the threat; others might conclude he used a gun. But that disagreement—a disagreement about means—would not matter as long as all 12 jurors unanimously concluded that the Government had proved the necessary related element, namely, that the defendant had threatened force.

Id.

Richardson is directly applicable to Petitioner’s case. In Petitioner’s trial, the jury unanimously agreed that he used force to commit the robbery regardless of the means by which force was used. Thus, the jury’s verdict went above what is required for the Sixth and Fourteenth Amendments; it was unanimous. See Apodaca, 406 U.S. at 406; Johnson, 406 U.S. at 359. Petitioner fails to present that the trial court, in giving its jury instruction, applied a rule contradicting clearly established federal law or that the trial court decision is based on an unreasonable determination of fact. See § 2254(d).

## **III. Sentencing Error Claim**

Petitioner also argues that the trial court improperly sentenced him to both the upper terms and to consecutive sentences based upon the same aggravating factors which were

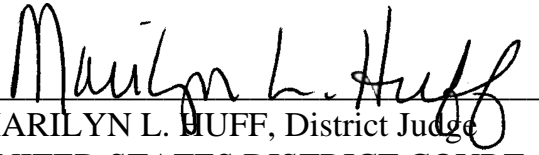
1 already used to impose prison prior enhancements. (Doc. No. 1.) Specifically, Petitioner  
2 argues that the sentencing error violated state law. (Id.) Because Petitioner has only alleged  
3 a violation of state law in claim two, it is not cognizable in a federal habeas petition. See §  
4 2254 (requiring a violation of clearly established federal law or a decision made on an  
5 unreasonable determination of facts to sustain a valid habeas petition).

6 **Conclusion**

7 For the reasons set forth above, the Court DENIES Petitioner's Writ of Habeas Corpus.  
8 The Court also denies a certificate of appealability.

9  
10 **IT IS SO ORDERED.**

11 DATED: April 5, 2010

12   
13 MARILYN L. HUFF, District Judge  
14 UNITED STATES DISTRICT COURT

15 COPIES TO:  
16 All parties of record.  
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