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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

GERALD A. GREEN,  
Petitioner,  
  
v.  
RICK HILL, Warden,  
Respondent.

Case No. 13-cv-01436-BAS-DHB

**ORDER:**

- (1) ADOPTING REPORT AND RECOMMENDATION [ECF NO. 18]; AND**
- (2) DENYING PETITIONER'S REQUEST FOR HABEAS RELIEF [ECF NO. 1]**

20 On June 28, 2012, Petitioner Gerald A. Green, a state prisoner proceeding  
21 pro se, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254.  
22 Pet'r Pet., ECF No. 1. Petitioner seeks habeas relief from his indeterminate life  
23 sentence for first degree residential burglary imposed under California's three  
24 strikes law in 1997. Pet'r Pet. On October 7, 2012, Respondent Rick Hill filed an  
25 Answer to the Petition. Respt't's Answer, ECF No. 13. On November 19, 2013,  
26 Petitioner filed a Traverse. Pet'r Traverse, ECF No. 17. On February 27, 2014,  
27 United States Magistrate Judge David H. Bartick issued a Report and  
28 Recommendation ("Report") recommending the court deny the Petition and

1 ordering Petitioner and Respondent to file objections to the Report no later than  
2 April 1, 2014. Report, ECF No. 18. Petitioner was subsequently given until May  
3 1, 2014 to file objections. ECF No. 20. Petitioner filed objections to the Report on  
4 April 28, 2014. Pet'r Obj., ECF No. 21.

5 For the following reasons, the Court **OVERRULES** Petitioner's objections,  
6 Pet'r Obj., ECF No. 21, **ADOPTS** the Report in its entirety, Report, ECF No. 18,  
7 and **DENIES** the Petition with prejudice. Pet'r Pet., ECF No. 1.

8 **I. FACTUAL AND PROCEDURAL BACKGROUND**

9 Petitioner has three first-degree convictions for residential burglary under  
10 California law: one in October 1984 (Pet'r Pet. 23), a second in August 1988 (id.  
11 at 22), and a third in August 1997 (id. at 21). Because Petitioner's 1984 and 1988  
12 convictions were for "serious offenses" under California law, and because  
13 Petitioner was being convicted of a serious offense once again in 1997, Petitioner's  
14 1997 conviction resulted in an indeterminate life sentence pursuant to California's  
15 three strikes law. Pet'r Pet. 21, 24.

16 On January 9, 2013, Petitioner filed a petition for a writ of habeas corpus in  
17 the California Superior Court, San Diego County seeking resentencing under the  
18 Three Strikes Reform Act (TSRA).<sup>1</sup> Pet'r Pet. 25–26. The Superior Court denied  
19 the petition because Petitioner's 1997 commitment offense, first degree residential  
20 burglary, was a serious felony under California Penal Code § 1192.7(c)(18) and  
21 Petitioner was therefore ineligible for resentencing under TSRA. Pet'r Pet. 24, 26.  
22 Petitioner subsequently filed a habeas petition in the California Court of Appeal,  
23 Pet'r Pet. 28, which was denied on the same basis. Pet'r Pet. 29. Petitioner then  
24 filed a habeas petition in the California Supreme Court, Pet'r Pet. 27, and the  
25 Court summarily denied review. Pet'r Pet. 30.

26  
27 <sup>1</sup> TSRA modified California's three strikes rule to permit felons to apply for resentencing if their  
28 current conviction was not for a serious or violent offense as defined by California Penal Code §§  
1192.7(c) or 667.5(c). See Cal Penal Code § 1170.126(e); People v. Yearwood, 151 Cal. Rptr. 3d  
901, 906 (2013), as modified on denial of reh'g (Feb. 19, 2013), review filed (Mar. 6, 2013).

1           On January 24, 2013, Petitioner filed this Petition seeking 28 U.S.C. § 2254  
2 habeas relief from his 1997 indeterminate life sentence. Pet’r Pet. 14–19, 31–37.  
3 Petitioner argued he is entitled to federal habeas relief because he claims he is  
4 eligible for resentencing under the TSRA. Pet’r Pet. 16. Petitioner also argued he  
5 is entitled to relief because, alternatively, his 1984 and 1988 convictions were not  
6 considered serious offenses under California law at the time he committed them,  
7 and therefore his 1997 indeterminate life sentence under the three strikes law was  
8 improper. Pet’r Pet. 33. United States Magistrate Judge Bartick issued the Report  
9 recommending the Court deny the Petition on both grounds advanced by  
10 Petitioner. Report, ECF No. 18. On April 28, 2014, Petitioner timely objected to  
11 the Report. Pet’r Obj., ECF No. 21.

## 12   **II.   LEGAL STANDARD**

13           When a party timely objects to a magistrate judge’s report and  
14 recommendations pursuant to Federal Rule of Civil Procedure 72(b)(2), the district  
15 court “must make a de novo determination of those portions of the report . . . to  
16 which objection is made,” and “may accept, reject, or modify, in whole or in part,  
17 the findings or recommendations made by the magistrate.” 28 U.S.C. §  
18 636(b)(1)(C); see also Fed. Rule Civ. P. 72(b)(3); U.S. v. Raddatz, 447 U.S. 667,  
19 676 (1980) (“Congress intended to permit whatever reliance a district judge, in the  
20 exercise of sound judicial discretion, [chooses] to place on a magistrate’s proposed  
21 findings and recommendations.”); U.S. v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th  
22 Cir. 2003) (holding 28 U.S.C. § 636(b)(1)(C) “makes it clear that the district judge  
23 must review the magistrate judge’s findings and recommendations de novo if  
24 objection is made”) (emphasis in original).

## 25   **III.   ANALYSIS**

26           Judge Bartick recommends this Court deny the Petition. Report 8:19–25,  
27 ECF No. 18. Judge Bartick determined Petitioner’s request for resentencing under  
28 TSRA failed to raise a cognizable federal claim and, even assuming a federal claim

1 was raised, the California courts reasonably rejected Petitioner’s request for  
2 resentencing. Report 5:28–7:5. Judge Bartick also determined Petitioner’s  
3 argument concerning his 1984 and 1988 convictions failed to raise a federally  
4 cognizable claim and, even assuming it did, such a challenge is time-barred under  
5 the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). Report  
6 7:13–8:18.

7 Petitioner objects to the Report on two grounds. See Pet’r Obj., ECF No. 21.  
8 First, Petitioner again argues his 1984 and 1988 convictions for first degree  
9 residential burglary underlying his 1997 indeterminate life sentence did not  
10 constitute serious offenses under California law when he plead guilty to the offense  
11 in 1984 and a jury convicted him of the offense in 1988. Pet’r Obj. 13:13–21.  
12 Accordingly, Petitioner believes his 1997 indeterminate life sentence under the  
13 three strike rule was improper. Pet’r Obj. 16:14–18:21. Second, Petitioner  
14 contends his Petition raises a federally cognizable claim for § 2254 habeas relief  
15 which the Court may adjudicate. Pet’r Obj. 18:22–24, 20:19–24. Petitioner’s  
16 objections do not address the remainder of the Report’s recommendations, and  
17 those points (that the California Courts reasonably rejected Petitioner’s request for  
18 resentencing and that Petitioner’s argument concerning his 1984 and 1988  
19 convictions is time-barred) are considered conceded. See *U.S. v. Reyna-Tapia*, 328  
20 F.3d 1114, 1121 (9th Cir. 2003) (holding 28 U.S.C. § 636(b)(1)(C) “makes it clear  
21 that the district judge must review the magistrate judge’s findings and  
22 recommendations de novo if objection is made”) (emphasis in original).

23 A federal court “shall entertain an application for a writ of habeas corpus on  
24 behalf of a person in custody pursuant to the judgment of a state court only on the  
25 ground he is in custody in violation of the Constitution or laws or treaties of the  
26 Unites States.” 28 U.S.C. § 2254(a). AEDPA governs this case. See *Medina v.*  
27 *Hornung*, 386 F.3d 872, 877 (9th Cir. 2004) (noting AEDPA governs appeals of  
28 state court habeas determinations). AEDPA requires the court to defer to

1 reasonable factual determinations made by the state courts as these determinations  
2 are presumed correct. 28 U.S.C. § 2254(e)(1); see also *Schriro v. Landrigan*, 550  
3 U.S. 465, 473–74 (2007) (“AEDPA also requires federal habeas courts to presume  
4 the correctness of state courts’ factual findings . . .”). Under AEDPA, a habeas  
5 petition may only be granted with respect to a claim adjudicated on the merits by a  
6 state court in two instances. 28 U.S.C. § 2254(d)(1)–(2); *Early v. Packer*, 537 U.S.  
7 3, 8 (2002); *Medina*, 386 F.3d at 877.

8 First, federal habeas relief may be granted if the state court’s adjudication  
9 resulted in a decision that was contrary to, or involved an unreasonable application  
10 of, clearly established federal law. 28 U.S.C. § 2254(d)(1); *Early*, 537 U.S. 3, 8  
11 (2002); *Medina*, 386 F.3d at 877. “Clearly established federal law” means the law  
12 “as determined by the Supreme Court.” 28 U.S.C. § 2254(d)(1); accord *Medina*,  
13 386 F.3d at 877. Accordingly, the state court must have applied a rule different  
14 from the governing law set forth in Supreme Court cases, or decided a case  
15 differently than the Supreme Court on a set of materially indistinguishable facts.  
16 *Bell v. Cone*, 535 U.S. 685, 694 (2002). Where there is no “clearly established  
17 Supreme Court precedent addressing the issue” before the court, the court “must  
18 defer to the state court’s decision.” *Moses v. Payne*, 555 F.3d 742,754 (9th Cir.  
19 2009); see also *Carey v. Musladin*, 549 U.S. 70, 77 (2006) (holding a dearth of  
20 Supreme Court rulings on the issue before the district court precluded federal  
21 habeas relief from a state court adjudication on the merits of a plaintiff’s state  
22 habeas petition).

23 Alternatively, a habeas petition may be granted where the state court’s  
24 adjudication resulted in a decision that was based on an unreasonable  
25 determination of the facts in light of the evidence presented at the state court  
26 proceeding. 28 U.S.C. § 2254(d)(2); *Early*, 537 U.S. at 8; *Medina*, 386 F.3d at  
27 877. The state court must have unreasonably applied a governing legal principle  
28 articulated by the Supreme Court, *Bell*, 535 U.S. at 694, and this unreasonable

1 application must have been “objectively unreasonable,” meaning more than merely  
2 “incorrect or erroneous.” *Locker v. Andrade*, 538 U.S. 63, 75 (2003).

3 **A. Petitioner Fails to Raise a Federally Cognizable Claim in**  
4 **Challenging his 1984 and 1988 Convictions.**

5 The Court agrees with Judge Bartick’s determination that Petitioner’s  
6 challenge to his 1984 and 1988 convictions underlying his 1997 indefinite life  
7 sentence fails to raise a federally cognizable claim. Matters related to sentencing  
8 under state law are governed by state law, and federal habeas relief is not available  
9 for alleged state court errors in the interpretation or application of those laws. See,  
10 e.g., *Estelle v. McGuire*, 502 U.S. 62, 67–68 (1991) (“[I]t is not the province of a  
11 federal habeas court to reexamine state-court determination on state-law  
12 questions.”); *Brown v. Mayle*, 283 F.3d 1019, 1040 (9th Cir. 2002) (holding a  
13 federal habeas challenge to a state court’s denial of a Romero motion was barred  
14 from review in a federal habeas proceeding), vacated on other grounds, *Mayle v.*  
15 *Brown*, 538 U.S. 901 (2003). Further, the Supreme Court bars the utilization of §  
16 2254 habeas petitions to challenge sentence enhancements to state convictions  
17 which are no longer open to direct or collateral attack. See *Lackawanna Cnty.*  
18 *Dist. Attorney v. Cross*, 532 U.S. 394, 403-404 (2001) (holding state court  
19 convictions no longer open to direct or collateral attack are conclusively valid and,  
20 if these convictions are later used by a state court to enhance a criminal sentence,  
21 such sentence may not be challenged “through a petition under § 2255 on the  
22 ground that the prior conviction was unconstitutionally obtained”).

23 Thus, in challenging whether his 1984 and 1988 convictions were for serious  
24 felonies under California law, Petitioner does not raise federal claims which the  
25 Court may adjudicate. Petitioner’s objection to the Report has not demonstrated  
26 his attack on his 1984 and 1988 convictions for first degree residential burglary  
27 raises a federal claim under either avenue of relief AEDPA provides. Petitioner  
28 has not shown the California Court of Appeal contrarily or unreasonable applied

1 Supreme Court case law, nor that the Court of Appeal reached an unreasonable  
2 determination of the facts of his case. Petitioner’s first objection speaks only to his  
3 1984 and 1988 state court convictions and do not address the Court of Appeal’s  
4 determination of his habeas petition. See, Pet’r Obj. 8–10, ECF No. 21.

5 Accordingly, because Petitioner’s first objection constitutes direct attacks to  
6 his 1984 and 1988 convictions, he fails to raise a cognizable federal claim.

7 **B. Petitioner Fails to Raise a Federally Cognizable Claim in Requesting**  
8 **Resentencing Under TSRA.**

9 The Court also agrees with Judge Bartick’s determination that Petitioner’s  
10 request for resentencing under TSRA fails to raise a federally cognizable claim.  
11 Petitioner’s second objection conclusively argues his Petition raises a federally  
12 cognizable claim for § 2254 habeas relief because he “argued in the State . . .  
13 whether [his] prior convictions were [c]onstitutionally valid strikes under the laws  
14 and the facts” underlying his 1997 indeterminate life sentence. Pet’r Obj. 20:19–  
15 24, ECF No. 21. However, the objection does not argue the California Court of  
16 Appeal contrarily or unreasonably applied Supreme Court case law, or reached an  
17 unreasonable determination of the facts of his case, in denying his request for  
18 resentencing under TSRA. See generally Pet’r Obj. 18:22–31:5. Rather,  
19 Petitioner’s second objection proffers a delineation of AEDPA’s two avenues of  
20 federal habeas relief followed by various headnotes from Supreme Court cases  
21 discussing substantive due process and fundamental fairness. *Id.*

22 As explained above, federal habeas relief is not available for alleged errors  
23 in a state court’s interpretation or application of its sentencing laws. See *Estelle*,  
24 502 U.S. at 67–68; *Mayle*, 283 F.3d at 1040. Therefore, that Petitioner argued  
25 whether his 1984 and 1988 convictions for first degree residentially burglary were  
26 constitutionally valid in his state habeas proceedings does not itself confer federal  
27 jurisdiction in this federal habeas proceeding. Additionally, the cases discussing  
28 substantive due process and fundamental fairness Petitioner cites do not

1 demonstrate that the California Court of Appeal's denial of his request for  
2 resentencing under TSRA raises a federally cognizable claim under either avenue  
3 of relief AEDPA affords. See Pet'r Obj. 20:25–31:5.

4 Accordingly, Petitioner's second objection fails to indicate that his request  
5 for resentencing under TSRA raises a cognizable federal claim.


6 **IV. CONCLUSION & ORDER**

7 After considering Petitioner's objections and conducting a de novo review of  
8 them, the Court concludes Petitioner's two objections to the Report are without  
9 merit. Additionally, Judge Bartick's reasoning in those portions of the Report not  
10 objected to is sound. Accordingly, the court **ADOPTS** the Report in its entirety  
11 (ECF No. 18), **OVERRULES** Petitioner's objections (ECF No. 21), and **DENIES**  
12 this habeas petition with prejudice in its entirety (ECF No. 1).

13 Moreover, because reasonable jurists would not find the court's assessment  
14 of the claims debatable or wrong, the court **DENIES** a certificate of appealability.  
15 See *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

16 **IT IS SO ORDERED.**

17 Dated: December 1, 2014

18   
19 Hon. Cynthia Bashant  
20 United States District Judge  
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