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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 Andrew MUNDY,

11 Petitioner,

12 v.

13 Raymond MADDEN,

14 Respondent.

Case No.: 17-cv-0174-CAB-AGS

**ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS (ECF
No. 1)**

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16 Petitioner, a state prisoner, challenges his sentence of 44 years plus 100 years to life.
17 The Court has reviewed the pertinent portions of the record and has considered the legal
18 arguments presented by both parties. For the reasons discussed below, the petition is
19 denied.

20 **BACKGROUND**

21 A California jury found petitioner guilty of four counts of first degree burglary and
22 one count of unlawful taking or driving a motor vehicle. (ECF No. 18-9, at 5.) The
23 California Court of Appeal's opinion in petitioner's direct appeal has a thorough,
24 unchallenged recitation of the facts in petitioner's case, which the Court adopts by
25 reference but which do not warrant restating in full.¹ (*See id.* at 2-5.) In short, though,
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28 ¹ This Court gives deference to state court findings of fact and presumes them to be correct; petitioner may rebut the presumption of correctness, but only by clear and

1 “[d]uring the span of four months, [petitioner] forced entry into four separate homes,
2 ransacked them, and stole numerous valuable items from multiple victims.” (*Id.* at 1-2.)
3 Petitioner had two prior serious felony convictions, a prior vehicle theft conviction, and a
4 qualifying prior prison term. (*Id.* at 2.) Petitioner filed a motion requesting the trial court
5 not consider those as “strikes” under California’s Three Strikes law. After denying that
6 motion, the trial court sentenced petitioner under California’s Three Strikes law to a total
7 prison term of 44 years plus 100 years to life. (*Id.*)

8 Direct review of petitioner’s conviction concluded after the California Court of
9 Appeal affirmed the conviction (ECF No. 18-9) and the California Supreme Court denied
10 his petition for review without comment. (ECF No. 18-11.) Petitioner did not file any state
11 habeas corpus petitions. On January 26, 2016, petitioner filed the present petition. (ECF
12 No. 1.)

13 STANDARD OF REVIEW

14 A habeas petition will not be granted unless the adjudication was (1) contrary to, or
15 involved an unreasonable application of, clearly established federal law; or (2) based on an
16 unreasonable determination of the facts in light of the evidence presented.
17 28 U.S.C. § 2254(d); *Lockyer v. Andrade*, 538 U.S. 63, 70-71 (2003). In deciding a state
18 prisoner’s habeas petition, a federal court is not called upon to decide whether it agrees
19 with the state court’s determination; rather, the court applies an extraordinarily deferential
20 review, inquiring only whether the state court’s decision was objectively unreasonable. *See*
21 *Yarborough v. Gentry*, 540 U.S. 1, 4 (2003); *Medina v. Hornung*, 386 F.3d 872, 877 (9th
22 Cir. 2004).

23 Where there is no reasoned decision from the state’s highest court, the Court “looks
24 through” to the underlying appellate court decision and presumes it provides the basis for
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27 convincing evidence. *See* 28 U.S.C. § 2254(e)(1); *see also Parke v. Raley*, 506 U.S. 20, 35-
28 36 (1992) (holding findings of historical fact, including inferences properly drawn from
those facts, are entitled to statutory presumption of correctness).

1 the higher court’s denial of a claim or claims. *See Ylst v. Nunnemaker*, 501 U.S. 797, 805-
2 06 (1991). Here, the California Court of Appeal gave a reasoned opinion as to petitioner’s
3 claims. (ECF No. 18-9.)

4 **DISCUSSION**

5 Petitioner raises two grounds for relief.² First, he alleges that the trial court abused
6 its discretion in refusing to dismiss his prior strike convictions. (ECF No. 1, at 6.) Second,
7 petitioner alleges that his 44 years plus 100 years to life sentence violates the prohibition
8 against cruel and unusual punishment under the Eighth Amendment of the United States
9 Constitution. (*Id.* at 7.)

10 **A. Abuse of Discretion**

11 Petitioner argues that the trial court abused its discretion authorized under California
12 Penal Code section 1385 by considering his prior strike convictions and thus, sentencing
13 him under California’s Three Strikes law. (ECF No. 1, at 6.)

14 In determining that the trial court did not abuse its discretion, the California Court
15 of Appeal stated that a trial court has the discretion to dismiss a strike “if, in light of the
16 nature and circumstances of the current and prior felony convictions and the particulars of
17 the defendant’s background, character, and prospects, the defendant is deemed outside of
18 the spirit of the Three Strikes law in whole or in part.” (ECF No. 18-9, at 17 (citing *People*
19 *v. Williams*, 17 Cal. 4th 148, 161 (1998)).) The California Court of Appeal applied a
20 standard of review set forth by the California Supreme Court (*see id.*) and concluded that
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24 ² Petitioner also raises a new argument never presented to the state courts: that his
25 trial and appellate attorneys were ineffective for failing to challenge the constitutionality
26 of his sentence. (*See* ECF No. 1, at 7.) On June 15, 2017, petitioner filed a motion for stay
27 and abeyance. (ECF No. 6.) On December 4, 2017, Magistrate Judge Andrew G. Schopler
28 issued a Report and Recommendation, recommending the Court deny the motion for stay
and dismiss the unexhausted ineffective-assistance-of-counsel claim. (ECF No. 11.) On
January 19, 2018, the Court adopted Magistrate Judge Schopler’s Report and
Recommendation in its entirety (ECF No. 12); so that claim has already been adjudicated.

1 petitioner is “precisely the type of recidivist offender targeted by the Three Strikes law.”
2 (*Id.* at 19.)

3 Such a review for abuse of discretion under California law, however, is not a
4 cognizable claim in a federal court’s collateral review. Petitioner is not entitled to federal
5 habeas relief on this claim because the judgment of the California Court of Appeal was
6 based on California state law and “it is not the province of a federal habeas court to
7 reexamine state-court determinations on state-law questions.” *Estelle v. McGuire*, 502 U.S.
8 62, 67-68 (1991). Accordingly, this Court is not permitted to review the state court’s refusal
9 to exercise its discretion under state law. *See Edwards v. Ollison*, 621 F. Supp. 2d 863, 881
10 (C.D. Cal. 2008) (“[P]etitioner’s claim that the trial court improperly denied his request to
11 strike the prior convictions is not subject to federal habeas review.”).

12 **B. Prohibition on Cruel and Unusual Punishment**

13 Petitioner also argues that his sentence of 44 years plus 100 years to life violates the
14 Cruel and Unusual Punishment Clause of the United States Constitution. The Court
15 disagrees.

16 Petitioner’s claim was reasonably rejected by the California Court of Appeal. The
17 Eighth Amendment does not require strict proportionality between the sentence and the
18 crime; rather, it forbids only extreme sentences that are “grossly disproportionate” to the
19 crime. *Harmelin v. Michigan*, 501 U.S. 957, 1001 (1991); *Solem v. Helm*, 463 U.S. 277,
20 288 (1983); *Rummel v. Estelle*, 445 U.S. 263, 271 (1980). “Outside the context of capital
21 punishment, successful challenges to the proportionality of particular sentences [are]
22 exceedingly rare.” *Rummel*, 445 U.S. at 272. The United States Supreme Court has
23 repeatedly upheld sentences under state recidivism statutes, including California’s Three
24 Strikes law. *See Ewing v. California*, 538 U.S. 11, 20 (2003) (upholding Three Strikes
25 sentence of 25 years to life for a defendant who stole three golf clubs, because seven years
26 earlier the defendant had been convicted of three residential burglaries and one first degree
27 robbery); *Andrade*, 538 U.S. at 63 (upholding two consecutive 25-years-to-life terms under
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1 California's Three Strikes law for a defendant who stole \$150 worth of videotapes with
2 three prior convictions for first degree burglary).

3 In *Ewing*, the United States Supreme Court held that "[w]hen the California
4 legislature enacted the three strikes law, it made a judgment that protecting the public safety
5 requires incapacitating criminals who have already been convicted of at least one serious
6 or violent crime. Nothing in the Eighth Amendment prohibits California from making that
7 choice." *Ewing*, 538 U.S. at 25. The California Court of Appeal appropriately cited to and
8 followed United States Supreme Court law when concluding that petitioner's sentence did
9 not violate the Eighth Amendment to the United States Constitution:

10 Here, as in *Ewing* and *Andrade*, Mundy's lengthy sentence was
11 not unconstitutional because it was properly based on his
12 recidivist conduct. Despite multiple criminal punishments as a
13 juvenile and as an adult, he chose to continue his criminal
14 behavior. He committed several residential burglaries in 2004,
15 resulting in his two prior strikes and a prison term. The fact that
16 Mundy elected to repeat (four times) the very same serious and
17 violent offense (§§ 667.5, subd. (c)(21), 1192.7, subd. (c)(18))
for which he had received strike priors and which resulted in
prison confinement supports the court's conclusion that he is
(and would continue to be) a recidivist offender.

18 (ECF No. 18-9, at 14.)

19 To support his unconstitutionality claim, Mundy argues his
20 sentence greatly exceeds the sentencing range applicable to
21 residential burglary and is more severe than the punishment
22 imposed for many extremely violent crimes such as first degree
23 murder. This contention is unavailing because Mundy's lengthy
24 imprisonment term is not merely for the four instances of
25 residential burglary, but also for his recidivist conduct of
engaging in the same serious offense notwithstanding his
previous convictions and punishments.

26 (ECF No. 18-9, at 15-16.) Given the United States Supreme Court's deference to
27 California's legislature and its holding that lengthy indeterminate sentences imposed under
28 California's Three Strikes law do not violate the Eighth Amendment, petitioner fails to

1 show that the California Court of Appeal unreasonably applied clearly established federal
2 law in upholding his sentence. Petitioner has repeatedly broken into the homes of his
3 victims—an inherently dangerous activity—to commit crimes. Petitioner’s history of conduct
4 is at least as bad, and arguably worse, than the sentences upheld in *Ewing* and *Andrade*.
5 Thus, based on petitioner’s recidivism and the serious nature of his crimes, his challenge
6 fails.

7 **CONCLUSION**

8 Accordingly, the Court **DENIES** petitioner’s habeas petition. Rule 11 of the Rules
9 Governing Section 2254 Cases states that “[t]he district court must issue or deny a
10 certificate of appealability when it enters a final order adverse to the applicant.” A
11 certificate of appealability should issue as to those claims on which a petitioner makes a
12 “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The
13 standard is satisfied if “jurists of reason could disagree with the district court’s resolution
14 of [the] constitutional claims” or conclude the issues presented are adequate to deserve
15 encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).
16 Neither is the case here, and so the Court declines to issue the certificate of appealability.
17 The Clerk is directed to close this case.

18 Dated: October 16, 2018



19 _____
20 Hon. Cathy Ann Bencivengo
21 United States District Judge
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