UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 21 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

In re: SOBHY FAHMY AMIN ISKANDER.

SOBHY FAHMY AMIN ISKANDER,

Petitioner,

v.

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, RIVERSIDE,

Respondent,

DEAN BORDERS, Warden,

Real Party in Interest.

No. 18-70230

D.C. No.
5:16-cv-00554-SJO-MRW
Central District of California,
Riverside

ORDER

Before: THOMAS, Chief Judge, W. FLETCHER and CALLAHAN, Circuit Judges.

Petitioner has not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus. *See Bauman v. U.S. Dist. Court*, 557 F.2d 650 (9th Cir. 1977). Accordingly, the petition is denied.

All other pending motions are denied as moot.

Petition No. 18-70321 remains pending.

DENIED.

SLL/MOATT

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

SOBHY FAHMY AMIN ISKANDER,
Petitioner,
v.
DEAN BORDERS, Warden,
Respondent.

Case No. ED CV 16-554 SJO (MRW)

ORDER DENYING CERTIFICATE OF APPEALABILITY

Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts requires a district court to issue or deny a certificate of appealability when it enters a final order adverse to the applicant.

Under 28 U.S.C. § 2253(c)(2), a COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." The Supreme Court has held that this standard means showing that "reasonable jurists could debate whether (of, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve

encouragement to proceed further." Slack v. McDaniel, 529 U.S. 473, 484 (2000) (internal quotations omitted).

Here, after duly considering Petitioner's contentions in support of the claims alleged in the petition, the Court concludes that petitioner failed to make the requisite showing for the issuance of a Certificate of Appealability.

Accordingly, a Certificate of Appealability is denied in this case.

DATE: August 30, 2016.

S. James Otero

HON. S. JAMES OTERO
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

SOBHY FAHMY AMIN ISKANDER,
Petitioner,
v.
DEAN BORDERS, Warden,
Respondent.

Case No. ED CV 16-554 SJO (MRW)

JUDGMENT

Pursuant to the Order Accepting Findings and Recommendations of the United States Magistrate Judge,

IT IS ADJUDGED that the petition is denied and this action is dismissed with prejudice.

DATE: August 30, 2016

S. James Otero

HON. S. JAMES OTERO
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

SOBHY FAHMY AMIN ISKANDER,
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Respondent.

Case No. ED CV 16-554 SJO (MRW)

ORDER ACCEPTING FINDINGS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court reviewed the petition, the records on file, and the Report and Recommendation of the United States Magistrate Judge. Further, the Court engaged in a de novo review of those portions of the Report to which Petitioner objected. The Court accepts the findings and recommendation of the Magistrate Judge.

IT IS ORDERED that Judgment be entered denying the petition and dismissing this action with prejudice.

DATE: August 30, 2016.

S. James Otero

HON. S. JAMES OTERO
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

SOBHY FAHMY AMIN ISKANDER,

Petitioner,

v.

DEAN BORDERS, Warden,

Respondent.

Case No. ED CV 16-554 SJO (MRW)

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This Report and Recommendation is submitted to the Honorable S. James Otero, United States District Judge, pursuant to 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California.

SUMMARY OF RECOMMENDATION

This is a habeas action involving a state prisoner. While Petitioner was serving his criminal sentence, the state trial court corrected an error in his original judgment. The "recalculated" sentence neither extended Petitioner's prison term nor caused him to forfeit any custody credits.

The Court concludes that Petitioner's habeas challenge does not raise any cognizable issue of federal constitutional law. As a result, the Court recommends that the petition be denied.

FACTS AND PROCEDURAL HISTORY

In 2010, a jury convicted Petitioner of four counts of child sexual abuse. The trial court sentenced Petitioner to an aggregate term of 12 years in prison. That figure represented: (a) an eight-year term on one count; (b) consecutive two-year terms on two different counts; and (c) a concurrent two-year term for another charge. (Lodgment # 1.)

In 2015, a prison official notified the trial court that the two-year concurrent term (item (c) above) did not comply with California law.[1] (Lodgment # 2.) On its own initiative, the trial court modified the sentence on that count. The corrected term for that charge became a six-year concurrent sentence. However, the trial court's minute order expressly stated that Petitioner's overall sentence – combining the concurrent and consecutive terms – remained "a total term of 12 years and 0 months." (Lodgment # 3 at 19.) According to the Attorney General, the resentencing had no impact on the calculation of Petitioner's pretrial and custodial credits. (Docket # 12 at 5; Lodgment 7 (credit calculation worksheet).)

Petitioner sought habeas relief in the state appellate and supreme courts. Both courts denied the petitions without comment. (Lodgment # 3-6.) This federal action followed.

[1] Relying on state law, the prison official explained that Petitioner's concurrent sentence could only be for one of the prescribed three terms listed in the statute; his consecutive terms had correctly been reduced using the one-third-of-middle-term formula. (Docket # 12 at 2.)

ANALYSIS

Petitioner broadly contends that the change to his sentence violates the Fifth Amendment. He also claims that prison officials "failed to apply the correct time calculation" under administrative regulations regarding his custody credits following the sentencing correction. (Docket # 1 at 5; # 15.)

The Court summarily concludes that Petitioner failed to allege any cognizable federal constitutional violation that could lead to habeas relief. 28 U.S.C. § 2254(d). The Attorney General convincingly demonstrates that the correction to Petitioner's sentence will not lead to any increase in Petitioner's time in prison. (Docket # 12 at 4-6.) Rather, the total sentence imposed and the amount of pretrial and custody credits that Petitioner earned to date have not been affected by the trial court's actions. That cannot lead to the conclusion hat the trial court violated Petitioner's due process rights. Richmond v. Lewis, 506 U.S. 40, 50 (1992) (sentencing error violates Constitution when it is "so arbitrary or capricious as to constitute an independent due process" violation).

Instead, the gist of Petitioner's complaint rests on the state court's reconsideration of California sentencing law in correcting the criminal judgment. However, a challenge to a state court's application of its own sentencing laws is not subject to federal habeas review. Lewis v. Jeffers, 497 U.S. 764, 780 (1990); see also Campbell v. Blodgett, 997 F.2d 512, 522 (9th Cir. 1992) ("[a]s the Supreme Court has stated time and again, federal habeas corpus relief does not lie for errors of state law."); Christian v. Rhode, 41 F.3d 461, 469 (9th Cir. 1994) ("Absent a showing of fundamental unfairness, a state court's misapplication of its own sentencing laws does not justify federal habeas relief."); Crosby v. Knipp, No. CV 13-458 ABC (OP), 2014 WL 1652490, at *7 (C.D. Cal. 2014) ("sentencing error claims solely involving the interpretation or application of state sentencing law are not cognizable on federal habeas review"); McKinney v.

Roe, No. CV 02-4493 MMM (PJW), 2012 WL 4369301 (C.D. Cal. 2012) (same).

Petitioner has not demonstrated that the revised sentence implicated any clearly established principle of federal constitutional law. He also cannot show that the ministerial correction to his sentence led to any unfair consequence. As a result, his habeas petition does not state a cognizable claim for relief. Habeas relief is not warranted.

CONCLUSION

IT IS THEREFORE RECOMMENDED that the District Judge issue an order: (1) accepting the findings and recommendations in this Report; (2) directing that judgment be entered denying the Petition; and (3) dismissing the action with prejudice.

Dated: August 9, 2016

HON. MICHAEL R. WILNER
UNITED STATES MAGISTRATE JUDGE