

# EXHIBIT COVER PAGE



Appendix "A"  
Exhibit

Description of exhibit: "~~Petitioner was denied entry to the 2020 'Opinion'~~  
~~on the basis of her gender and sexual orientation.~~  
~~She was also denied entry to the 2020 'Opinion'.~~"

Number of pages to this exhibit: ~~4~~ #2

Jurisdiction: (check one only)

- ☐ Municipal Court
- ☐ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ☐ United States District Court
- ☒ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

JUN 11 2020

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

NORMAN PAUL BLANCO,

Petitioner-Appellant,

v.

RALPH M. DIAZ, Acting Secretary for the  
California Department of Corrections and  
Rehabilitation; OFFICE OF THE  
ATTORNEY GENERAL,

Respondents-Appellees.

No. 19-16681

D.C. No. 3:18-cv-02005-JLS-KSC  
Southern District of California,  
San Diego

ORDER

Before: TROTT and N.R. SMITH, Circuit Judges.

The request for a certificate of appealability is denied because appellant's 28 U.S.C. § 2254 petition fails to state any cognizable habeas claims debatable among jurists of reason. *See* 28 U.S.C. § 2253(c)(2)-(3); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012); *Nettles v. Grounds*, 830 F.3d 922, 934-35 (9th Cir. 2016) (en banc) (holding that claims fall outside “the core of habeas corpus” if success will not necessarily lead to immediate or earlier release from confinement), *cert. denied*, 137 S. Ct. 645 (2017); *see also Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

The denial of appellant's request for a certificate of appealability does not preclude him from pursuing conditions of confinement claims in a properly filed civil action brought pursuant to 42 U.S.C. § 1983.

Any pending motions are denied as moot.

**DENIED.**

# EXHIBIT COVER PAGE



APPENDIX "B"  
Exhibit

Description of exhibit: "602 appeal C.D.C. & exhausts administrative remedies  
~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~

Number of pages to this exhibit: # ~~\_\_\_\_\_~~ 5

Jurisdiction: (check one only)

- ☐ Municipal Court
- ☐ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

STATE OF CALIFORNIA  
DEPARTMENT OF CORRECTIONS AND REHABILITATION  
OFFICE OF APPEALS  
P. O. BOX 942883  
SACRAMENTO, CA 94283-0001

**THIRD LEVEL APPEAL DECISION**

Date: **FEB 21 2018**

In re: Norman Blanco, F39441  
California State Prison, Los Angeles County  
44750 - 60th Street West  
Lancaster, CA 93536-7620

TLR Case No.: 1714359

Local Log No.: LAC-17-03735

This matter was reviewed on behalf of the Director of the California Department of Corrections and Rehabilitation (CDCR) by Appeals Examiner D. Foston, Captain. All submitted documentation and supporting arguments of the parties have been considered.

**I APPELLANT'S ARGUMENT:** It is the appellant's position that his rights are being violated because the California State Prison, Los Angeles County (LAC) Case Records is not applying Proposition 57 properly. The appellant contends he is serving a non-violent term with an increased credit earning based upon his WG/Privilege Group status of "A-1/A." Additionally, the appellant believes his MAX date has been adjusted without cause. The appellant requests that Proposition 57 be applied retroactively; recalculation of his release date; and that he receive a Non-Violent Parole Process (NVPP) analysis.

**II SECOND LEVEL'S DECISION:** The review found that there was no basis to grant the appeal. A Correctional Case Records Supervisor reviewed and calculated the time periods the appellant was ineligible to earn work credits and his CDC Form 115, Rules Violation Report (RVR) credit losses and restorations. The appellant is a violent offender pursuant to California Penal Code Section (PC) 2933.1. Good Conduct Credits earning was at 15 percent prior to May 1, 2017. On and after May 1, 2017, the appellant earning rate changed to 20 percent. The Earliest Possible Release Date (EPRD) of January 7, 2023, has been correctly calculated. The appeal was denied at the Second Level of Review (SLR).

**III THIRD LEVEL DECISION:** Appeal is denied.

**A. FINDINGS:** The Third Level of Review (TLR) reviewed the issues of the appellant's appeal and reaffirms the institution's examination and conclusions as addressed within the SLR. The examiner finds the institution has presented the appellant a thorough response relative to the issues contained in this appeal. The examiner forwarded the appellant's appeal and supporting documentation to a CDCR Headquarters Case Records Administrator for review of the calculations pertaining to the appellant's EPRD. The examiner was subsequently advised by the Case Records Administrator the appellant's release date was correctly calculated by the LAC. However, since the completion of the SLR, the appellant's release date moved further out due to him receiving a 120 days credit loss for an RVR. The appellant's current EPRD is May 7, 2027. After considering the evidence and arguments herein, it has been determined that staff acted appropriately on the appellant's request. There shall be no relief afforded to the appellant at the TLR.

**B. BASIS FOR THE DECISION:**

PC: 667, 2900.5, 2933


California Code of Regulations, Title 15, Section: 3001, 3084.1, 3371.1, 3405

CDCR Operations Manual, Section: 73030.5, 73030.5.8.2, 73030.5.8.3, 73030.7.4, 73030.7.5, 73030.7.6, 73030.7.7

**C. ORDER:** No changes or modifications are required by the Institution.

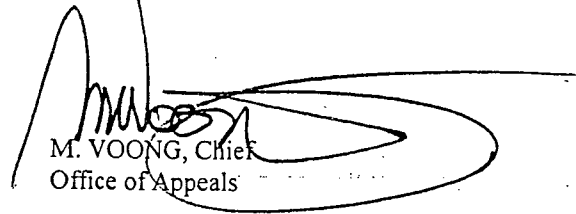
NORMAN BLANCO, F39441  
CASE NO. 1714359  
PAGE 2

This decision exhausts the administrative remedy available to the appellant within CDCR.



D. FOSTON, Appeals Examiner  
Office of Appeals

cc: Warden, LAC  
Appeals Coordinator, LAC



M. VOONG, Chief  
Office of Appeals

IAB USE ONLY

Institution/Parole Region:

Log #:

Category:

1714359



F39441

LAC-B

17-03735

(6)

FOR STAFF USE ONLY

You may appeal an adverse Regulatory action, Title 15, Section 3084.1. You must send this appeal and any supporting documents to the Appeals Coordinator (AC) within 30 calendar days of the event that led to the filing of this appeal. If additional space is needed, only one CDCR Form 602-A will be accepted. Refer to CCR 3084 for further guidance with the appeal process. No reprisals will be taken for using the appeal process.

\*Appeal is subject to rejection if one row of text per line is exceeded.

WRITE, PRINT, or TYPE CLEARLY in black or blue ink.

Name (Last, First):

CDC Number:

Unit/Cell Number:

Assignment:

Louie Morgan

17-03735

17-4-102

State briefly the subject of your appeal (Example: damaged TV, job removal, etc.):

pr. title 15 3371.1(b)(1) - 3086(a)(1) - 3084.1

A. Explain your issue (If you need more space, use Section A of the CDCR 602-A):

I received through "institutional mail" my supporting documents back from CDCR records, but not the reply or response from CDCR records regarding to my letter from under title 15 3086(a)(1) case

B. Action requested (If you need more space, use Section B of the CDCR 602-A):

to have my max release date changed back to what it was 4-24-2024 because high court still prison case records need the same when recalculation system as Lancaster

Supporting Documents: Refer to CCR 3084.3.

☒ Yes, I have attached supporting documents.

List supporting documents attached (e.g., CDC 1083, Inmate Property Inventory; CDC 128-G, Classification Chrono):

1) 22 from to CDC records - 1-1-2017  
2) CDC 128-G 1897-2017 calculation worksheet, Lancaster state prison

☐ No, I have not attached any supporting documents. Reason:

Inmate/Parolee Signature: Morgan Louie

Date Submitted: July 20, 2017

☐ By placing my initials in this box, I waive my right to receive an interview.

JUL 24 2017

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AUG 18 2017

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C. First Level - Staff Use Only

Staff - Check One: Is CDCR 602-A Attached? ☐ Yes ☐ No

This appeal has been:

☐ Bypassed at the First Level of Review. Go to Section E.

☐ Rejected (See attached letter for instruction) Date: JUL 28 2017

☐ Cancelled (See attached letter) Date:

☒ Accepted at the First Level of Review.

Assigned to: BS

Title: AW

Date Assigned: 8-25-17

Date Due: 10-2-17

First Level Responder: Complete a First Level response. Include Interviewer's name, title, interview date, location, and complete the section below.

Date of Interview:

Interview Location:

Your appeal issue is: ☐ Granted ☒ Granted in Part ☐ Denied ☐ Other:

Reviewer: See attached letter. If dissatisfied with First Level response, complete Section D.

Interviewer: C. Case

Title: CCR

Signature: C. Case

Date completed: 9/11/2017

Reviewer: D. Case

Title: AW

Signature: D. Case

Date received by AC: SEP 14 2017

AC Use Only

Date mailed/delivered to appellant: SEP 15 2017

D. If you are dissatisfied with the First Level response, explain the reason below, attach supporting documents and submit to the Appeals Coordinator for processing within 30 calendar days of receipt of response. If you need more space, use Section D of the CDCR 602-A.

*and my "new date" should not have been changed at all. I request a review hearing.*  
*In the case of KIMM V. SUPERIOR COURT (2016) by the California Superior Court Penal Code 245(a) is considered new violent and is a serious felony. I disagree with the let-out of appeal because prop 57 states "primary" offense in which the court sentence the defendant to the longest term excluding all "undercounts".*  
Inmate/Parolee Signature: MORRISON MORRISON Date Submitted: SEP 18, 2017

E. Second Level - Staff Use Only

Staff - Check One: Is CDCR 602-A Attached? ☐ Yes ☐ No

This appeal has been:

- ☐ By-passed at Second Level of Review. Go to Section G.  
☐ Rejected (See attached letter for instruction) Date: SEP 26 2017 Date: \_\_\_\_\_ Date: \_\_\_\_\_  
☐ Cancelled (See attached letter) Date: \_\_\_\_\_  
☒ Accepted at the Second Level of Review

Assigned to: DS Title: AW Date Assigned: 10-9-17 Date Due: 11-14-17

Second Level Responder: Complete a Second Level response. If an interview at the Second Level is necessary, include interviewer's name and title, interview date and location, and complete the section below.

Date of Interview: 10-30-2017 Interview Location: Program B

Your appeal issue is: ☐ Granted ☒ Granted in Part ☐ Denied ☐ Other: \_\_\_\_\_

See attached letter. If dissatisfied with Second Level response, complete Section F below.

Interviewer: S. DeCatur Title: CRS Signature: [Signature] Date completed: 10-30-2017

Reviewer: E. Brown Title: CDW(A) Signature: [Signature] Date: NOV 10, 2017

Date received by AC: \_\_\_\_\_

AC Use Only

Date mailed/delivered to appellant: 11-1-17

F. If you are dissatisfied with the Second Level response, explain reason below; attach supporting documents and submit by mail for Third Level Review. It must be received within 30 calendar days of receipt of prior response. Mail to: Chief, Inmate Appeals Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA 94283-0001. If you need more space, use Section F of the CDCR 602-A.

*I disagree with 2nd level. In the case of people v. nash (2008) p.c. 245(a) is not listed as a violent felony in p.c. 667.5. and in people v. nash (2008) prop. 21 amended 4492.7(c) by adding 14 persons to the "primary list" from: nash (2008) result weapon list - prop. 57 state in the case nash v. superior court (2016) "primary" offense the court gave you. exclude all "undercounts".*  
Inmate/Parolee Signature: MORRISON MORRISON Date Submitted: 11-9-2017

G. Third Level - Staff Use Only

This appeal has been:

- ☐ Rejected (See attached letter for instruction) Date: \_\_\_\_\_ Date: \_\_\_\_\_ Date: \_\_\_\_\_  
☐ Cancelled (See attached letter) Date: \_\_\_\_\_  
☒ Accepted at the Third Level of Review. Your appeal issue is ☐ Granted ☐ Granted in Part ☒ Denied ☐ Other: \_\_\_\_\_

See attached Third Level response.

Third Level Use Only

Date mailed/delivered to appellant: FEB 22 2018

H. Request to Withdraw Appeal: I request that this appeal be withdrawn from further review because; State reason: (If withdrawal is conditional, list conditions.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Inmate/Parolee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Staff Name: \_\_\_\_\_ Title: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_



1714359	IAB USE ONLY	Institution/Parole Region: LAC-B	Log #: 17-03735	Category: 6
	FOR STAFF USE ONLY			

Attach this form to the CDCR 602, only if more space is needed: Only one CDCR 602-A may be used.

Appeal is subject to rejection if one row of text per line is exceeded. WRITE, PRINT, or TYPE CLEARLY in black or blue ink.

Name (Last, First): Dance, Herman	CDC Number: R-32441	Unit/Cell Number: L-4 102	Assignment:
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A. Continuation of CDCR 602, Section A only (Explain your issue):

*Records kept the whole 22 years! I am appealing under prop. 57 that how is "retroactive" under the new section 3043(a) through 3043.24. (1) can records award my max release date and that should not have moved forward! - (2) my committed offense currently in penal code 245(a)(2) is considered non-violent under prop. 57 as I am entitled to non-violent early release consideration! - (3) 30% of 20 years is 6 years with my 1841 total post sentence credits which was not added to my new release date change notice under prop. 57 California constitutional article one section 32 to the California constitution! - (4) I have been a 1-a since August 1, 2016 as my did not see records give me any credit for that under "good conduct credit"? (but instead give me only good conduct credit from May 1, 2017 a-2-b. Had it when I was a 1-a! since August 1, 2016 which is clearly evidence that it shows that I was a 1-a! The St. Bernardino gave me a "vocational train" job then a "cultured worker" job but then on August 1, 2016 I became a 1-a. My rights are being violated because my records are not applying prop. 57 properly!*

Inmate/Parolee Signature: *M. Dance*

Date Submitted: *July 20, 2017*

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D. Continuation of CDCR 602, Section D only (Dissatisfied with First Level response):

Inmate/Parolee Signature: \_\_\_\_\_

Date Submitted: \_\_\_\_\_

F. Continuation of CDCR 602, Section F only (Dissatisfied with Second Level response):

Inmate/Parolee Signature: \_\_\_\_\_

Date Submitted: \_\_\_\_\_

SECTION A: INMATE/PAROLEE REQUEST

139441

NAME (Print): (LAST NAME)	(FIRST NAME)	CDC NUMBER:	SIGNATURE:
Lance, Mervin		13-39441	Mervin Lance
HOUSING/BED NUMBER:	ASSIGNMENT:	HOURS FROM _____ TO _____	TOPIC (I.E. MAIL, CONDITION OF CONFINEMENT/PAROLE, ETC.):
1-4-102	Case Records "L-400"		per title 13 section 3371.1(h)(1) - 3026 (1)(1)

CLEARLY STATE THE SERVICE OR ITEM REQUESTED OR REASON FOR INTERVIEW

under prop-57 that law is "retroactive" under title new section 3043(c) through 3043.2(c).  
 ① you changed my max release date and that should "not" have nevered happened. ② my comm-  
 itting offense p.c. 245(b)(2) is consider "not violent" under prop-57 so i am entitle to the non-  
 violent early parole consideration. ③ 80% of 20 years is 16 years with my 1,841 total post  
 sentence credits which was not added. ④ i have been "a-1-a" since august 1, 2016 so why  
 didn't i get credit for that?? (the lt. assignement give me a "vocational trade" get them a "cultural  
 worker" job. I recalculated my time from my "beginning" sentence with post sentence credits and my  
 a-1-a good conduct credits earned from August 1, 2016.

METHOD OF DELIVERY (CHECK APPROPRIATE BOX)

NO RECEIPT WILL BE PROVIDED IF REQUEST IS MAILED \*\*

☒ SENT THROUGH MAIL: ADDRESSED TO: L-400 Case Records "D-Rubin" C.C. K. DATE MAILED: 8/1/2017  
☒ DELIVERED TO STAFF (STAFF TO COMPLETE BOX BELOW AND GIVE GOLDENROD COPY TO INMATE/PAROLEE):

RECEIVED BY: PRINT STAFF NAME:	DATE:	SIGNATURE:	FORWARDED TO ANOTHER STAFF?
L. Watson	8-1-17	[Signature]	(CIRCLE ONE) YES NO
IF FORWARDED - TO WHOM:	DATE DELIVERED/MAILED:	METHOD OF DELIVERY:	
Case Records		(CIRCLE ONE) IN PERSON BY US MAIL	

SECTION B: STAFF RESPONSE

RESPONDING STAFF NAME:	DATE:	SIGNATURE:	DATE RETURNED:
Class	8/4/2017	Class	8/4/2017

① The Max Release date was changed based on your re-sentenced case and not prop 57.  
 ② You do not meet the criteria for the Non Violent Parole Process in that your sentence is a violent term per PC 117.5(c).  
 ③ You received 7 days post-sentence credit. This was not changed at re-sentencing.  
 ④ A violent offender only CD 22 time will affect your credit earnings.

SECTION C: REQUEST FOR SUPERVISOR REVIEW

PROVIDE REASON WHY YOU DISAGREE WITH STAFF RESPONSE AND FORWARD TO RESPONDENT'S SUPERVISOR IN PERSON OR BY US MAIL. KEEP FINAL CANARY COPY.

① H-d-a-p recalculated my re-sentencing date already. max date. (l-a-c changed that max date so why is that?) Under Bureau v. Superior Court (2016) 62 Cal.4th 1161 the California Supreme Court p.c. 245(b)(2) is considered non-violent and is a serious felony. ② prop-57 is "retroactive" so why didn't i get "re-calculated" my sentence from when they laid over post sentence? I have been a-1-a since august 1, 2016.

SIGNATURE:	DATE SUBMITTED:

SECTION D: SUPERVISOR'S REVIEW

RECEIVED BY SUPERVISOR (NAME):	DATE:	SIGNATURE:	DATE RETURNED:
T. LEO, CCRS	8-11-17	[Signature]	8-11-17

Please Submit these issues on a CDCR 602  
 appeal Form - To many issues and  
 to complex to answer on a Form 27

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Court of Appeal Fourth District  
**FILED**

MAY 30 2018

Kevin J. Lane, Clerk

DEPUTY

In re NORMAN PAUL BLANCO

D074025

on

(San Diego County  
Super. Ct. Nos. SCS187703 &  
HSC11663)

Habeas Corpus.

THE COURT:

The petition for writ of habeas corpus has been read and considered by Justices Huffman, Irion, and Guerrero. Judicial notice is taken of the opinions filed in appeal Nos. D049359 and D054441.

Norman Paul Blanco was sentenced on January 7, 2009, as a second-strike offender to an aggregate prison term of 20 years four months, after a jury found him guilty of assault with a firearm and several other felonies and found true an allegation he personally used a firearm in committing the assault. The sentence included a principal term of six years for the assault with a firearm conviction (the middle term of three years doubled for the prior strike) (Pen. Code, §§ 245, subd. (a)(2), 667, subd. (e)(1)) and a consecutive term of four years for the attached firearm enhancement (*id.*, § 12022.5, subd. (a)).

By the present petition, Blanco claims he is entitled to parole consideration and increased credits under Proposition 57. He contends the regulations adopted to implement Proposition 57 are unlawful because they preclude parole consideration for anyone in prison for a conviction that is a "violent felony" only because a firearm enhancement was attached to the conviction even though Proposition 57 mandates exclusion of all enhancements. Blanco further contends he should be awarded increased good conduct credits retroactive to the effective date of Proposition 57, not from the later date specified in the implementing regulations. We disagree with these contentions.

Proposition 57 took effect on November 9, 2016, and, as relevant to Blanco's petition, amended the California Constitution to add the following provisions as article I, section 32:

"A nonviolent offender, as defined in [the regulations], shall be eligible for parole consideration by the Board of Parole Hearings..." (*Id.*, tit. 15, § 3491, subd. (a).)

The Department also issued the following regulations regarding credit earning:

"(a) The award of Good Conduct Credit requires that an inmate comply with departmental regulations and local rules of the prison and perform the duties assigned on a regular and satisfactory basis.

"(b) Notwithstanding any other authority to award or limit credit, effective May 1, 2017, the award of Good Conduct Credit shall advance an inmate's release date . . . pursuant to the following schedule:

[¶] . . . [¶]

"(2) One day of credit for every four days of incarceration (20%) shall be awarded to an inmate serving a determinate or indeterminate term for a violent felony as defined in subdivision (c) of section 667.5 of the Penal Code . . . ." (Cal. Code Regs., tit. 15, § 3043.2.)

Blanco is ineligible for the parole consideration program mandated by Proposition 57 because he is *not* a "person convicted of a *nonviolent felony offense* and sentenced to state prison." (Cal. Const., art. I, § 32, subd. (a)(1), italics added.) He "is currently serving a term of incarceration for a '*violent felony*,' " namely, "a crime or enhancement as defined in subdivision (c) of section 667.5 of the Penal Code." (Cal. Code Regs., tit. 15, § 3490, subds. (a)(5), (c), italics added.) A "violent felony" includes "any felony in which the defendant uses a firearm which use has been charged and proved as provided in . . . Section 12022.5 . . . ." (Pen. Code, § 667.5, subd. (c)(8).) Blanco was convicted of assault with a firearm and sentenced to prison for that offense, making it a felony. (*Id.*, § 17, subd. (a).) The jury's true finding on the allegation he violated section 12022.5 by personally using a firearm in the assault made it a "violent felony" (*People v. Rodriguez* (2009) 47 Cal.4th 501, 506), for which he is currently serving a term of incarceration (*In re Reeves* (2005) 35 Cal.4th 765, 773 ["when an aggregate term includes time for a violent offense, at any point during that term the prisoner . . . actually is serving time for that offense"]). Proposition 57 did not, as Blanco erroneously contends, require the Department to disregard firearm or other enhancements in adopting regulations to define "nonviolent offender" for purposes of determining *who* is eligible for parole consideration. Rather, Proposition 57 requires the Department to disregard enhancements in determining *when* a nonviolent offender has "complet[ed] the full term for his or her primary offense" and is thus eligible for parole consideration. (Cal. Const., art. I, § 32, subd. (a)(1).) The Department's implementing regulations comply with this timing requirement (Cal. Code Regs., tit. 15, §§ 3490, subds. (d)-(f)) and are not unlawful.

Blanco is not entitled to increased good conduct credits retroactive to the date Proposition 57 took effect, i.e., November 9, 2016. The implementing regulations took effect on May 1, 2017, and increased the credit accrual rate to 20 percent (Cal. Code Regs.,

tit. 15, § 3043.2) from the prior statutory limit of 15 percent for a person convicted of a "violent felony" as defined in Penal Code section 667.5, subdivision (c) (*id.*, § 2933.1, subd. (a)). Absent an express retroactivity provision or strong indication from extrinsic sources that retroactive application was intended, increases in credit accrual rates, which are designed to encourage prisoners to engage in productive work and maintain good conduct and can only influence future behavior, apply prospectively only. (*People v. Brown* (2012) 54 Cal.4th 314, 320, 327.) Proposition 57 authorized the Department to adopt regulations to award credits for good behavior (Cal. Const., art. I, § 32, subds. (a)(2), (b)), but said nothing about the retroactivity of any such regulations. Blanco has identified nothing in the materials made available to voters that indicates the regulations regarding credits would be retroactive. (See *People v. Pineda* (2017) 14 Cal.App.5th 469, 484 (conc. & dis. opn. of Kriegler, J.) ["Proposition 57 . . . is completely silent in its text and the voters' guide on the issue of retroactivity."].) Therefore, these regulations apply prospectively only.

The petition is denied.

GUERRERO, Acting P. J.

Copies to: All parties

SUPREME COURT  
**FILED**

Court of Appeal, Fourth Appellate District, Division One - No. D074025 JUL 18 2018

S249312

Jorge Navarrete Clerk

**IN THE SUPREME COURT OF CALIFORNIA**

Deputy

**En Banc**

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In re NORMAN PAUL BLANCO on Habeas Corpus.

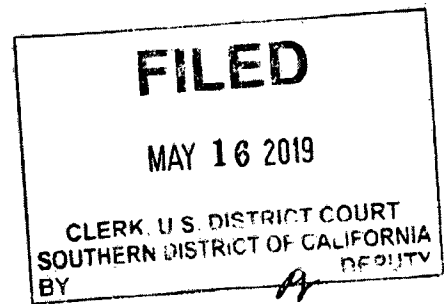
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The petition for review is denied.

**CANTIL-SAKAUYE**

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*Chief Justice*



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

NORMAN BLANCO,  
Petitioner,  
v.  
DEBBIE ASUNCION, Warden,  
Respondent.

Case No.: 18cv2005-JLS(KSC)

**REPORT AND RECOMMENDA-  
TION RE PETITION FOR WRIT OF  
HABEAS CORPUS**

Petitioner Norman Blanco, a state prisoner proceeding *pro se*, filed a Petition for Writ of Habeas Corpus under Title 28, United States Code, Section 2254, challenging the application and implementation of California's Proposition 57 to a sentence imposed in San Diego County Superior Court Case No. SCS187703. [Doc. No. 1.] Before the Court are respondent's Motion to Dismiss the Petition for Writ of Habeas Corpus [Doc. No. 6] and petitioner's Response thereto [Doc. No. 7]. For the reasons outlined below, IT IS RECOMMENDED that the District Court GRANT respondent's Motion to Dismiss the Petition.

**Background**

The record indicates that petitioner was sentenced by the San Diego Superior Court to a determinate term of twenty years, four months, in state prison for assault with a firearm; negligent discharge of a firearm; unlawful taking of a vehicle; evading a police



officer/reckless driving; assault with a deadly weapon (a firearm) on a peace officer; felon in possession of a firearm and ammunition. [Doc. No. 1, at p. 1; Doc. No. 6-1, at pp. 2, 8-11.] According to respondent, using a firearm while committing a felony offense is considered a “violent crime” under California law. Cal. Penal Code §§ 667.5(c)(8); 12022.5(a). [Doc. No. 6-1, at p. 2.] An attachment to the Petition indicates that petitioner filed a state habeas petition in the California Supreme Court, and the Petition was denied. [Doc. No. 1, at p. 7.]

### **Discussion**

#### **I. Motion to Dismiss Standards.**

A motion to dismiss under Federal Rule 12(b)(6) may be based on either a “lack of a cognizable legal theory” or “the absence of sufficient facts alleged under a cognizable legal theory.” *Johnson v. Riverside Healthcare System*, 534 F.3d 1116, 1122 (9<sup>th</sup> Cir. 2008).

#### **II. Denial of Parole Consideration Under California’s Proposition 57.**

In his first claim for relief, petitioner contends that his Federal Constitutional rights were violated, because he was denied his “entitlement to parole considerations” under Proposition 57. [Doc. No. 1, at p. 6.] Respondent argues that petitioner has failed to allege a cognizable claim for relief under the Federal Constitution. [Doc. No. 6-1, at pp. 3-5.]

“Proposition 57, . . . added a provision to California’s Constitution that reads: ‘Any person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense.’ (Cal. Const., art. I, § 32, subd. (a)(1) (hereafter section 32(a)(1) ).) The newly added constitutional provision defines ‘the full term for the primary offense’ as ‘the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence.’ (§ 32(a)(1)(A).)” *In re Edwards*, 26 Cal. App. 5th 1181, 1184 (Cal. Ct. App. 2018).

///

1 A Federal Court “shall entertain an application for a writ of habeas corpus in  
2 behalf of a person in custody pursuant to the judgment of a State court only on the ground  
3 that he is in custody in violation of the Constitution or laws or treaties of the United  
4 States.” 28 U.S.C.A. § 2254(a). “[I]f a state prisoner’s claim does not lie at ‘the core of  
5 habeas corpus’ . . . it may not be brought in habeas corpus but must be brought, ‘if at all,’  
6 under § 1983.” *Nettles v. Grounds*, 830 F.3d 922, 934 (9<sup>th</sup> Cir. 2016). A petitioner’s  
7 claim does not fall within “the core of habeas corpus” if success on the merits “would not  
8 necessarily lead to his immediate or earlier release from confinement.” *Nettles*, 830 F.3d  
9 at 935, citing *Skinner v. Switzer*, 562 U.S. 521, 535 n.13 (2011) (“when a prisoner’s claim  
10 would not ‘necessarily spell speedier release,’ that claim does not lie at ‘the core of  
11 habeas corpus,’ and may be brought, if at all, under § 1983”).

12 The petitioner in *Nettles*, who was serving a life sentence in state prison, filed a  
13 habeas petition in Federal Court challenging a disciplinary violation on Federal  
14 constitutional grounds. *Nettles*, 830 F.3d at 924. He argued that his eligibility for parole  
15 would be affected if the disciplinary violation was not expunged from his record. *Id.* at  
16 924-925. The Ninth Circuit upheld the dismissal of the petitioner’s claim, reasoning that  
17 success on the merits of his claim “would not necessarily lead to immediate or speedier  
18 release because the expungement of the challenged disciplinary violation would not  
19 necessarily lead to a grant of parole.” *Id.* at 934. As the Ninth Circuit in *Nettles*  
20 explained, California law requires the parole board to consider “all relevant, reliable  
21 information” to determine suitability for parole. The subject disciplinary violation was  
22 only one factor, and the parole board could deny parole “on the basis of any of the  
23 grounds presently available to it.” *Id.* at 935.

24 Here, respondent contends that the new parole provision in Proposition 57 does not  
25 apply in petitioner’s case, because he is currently incarcerated for a violent felony. [Doc.  
26 No. 6-1, at pp. 2, 4.] In his Opposition to respondent’s Motion, petitioner interprets  
27 California law differently and argues that the benefits of Proposition 57 do apply in his  
28 case, because he is not serving time for a violent felony. [Doc. No. 7, at pp. 6-12.]

Respondent also contends that petitioner has not stated a cognizable claim for habeas relief even if Proposition 57 does apply in his case, because success on his claim “would not necessarily lead to immediate or speedier release.” [Doc. No. 6-1, at p. 4, citing *Nettles*, 820 F.2d at 934-935.] Respondent is correct. Proposition 57 only provides for parole review once a prisoner serves “the full term for his or her primary offense.” (Cal. Const., art. I, § 32, subd. (a)(1).) Thus, even if petitioner could establish that this provision of Proposition 57 should apply in his case, he would only be eligible for parole consideration at an earlier time than might otherwise occur. In other words, Proposition 57 does not necessarily make petitioner eligible for an earlier release from prison. As in *Nettles*, 830 F.3d at 934, the parole board would still need to consider “all relevant, reliable information” to determine “suitability for parole.” *Id.* at 935. The parole board could then deny parole “on the basis of any of the grounds presently available to it.” *Id.* Therefore, petitioner’s claim falls “outside the core of habeas corpus.” *Id.* at 934. Under these circumstances, IT IS RECOMMENDED that the District Court DISMISS petitioner’s claim that his Constitutional rights have been violated, because he was denied his “entitlement to parole consideration” under Proposition 57. [Doc. No. 1, at p. 6.]

### **III. Denial of Retroactive Good Time Credits Under California’s Proposition 57.**

Petitioners’ second claim for relief is difficult to decipher, but it appears he contends that (1) his right to earn good conduct credits under Proposition 57 is being withheld from him in violation of Due Process; and (2) Due Process requires that good conduct credits under Proposition 57 be “applied retroactively.” [Doc. No. 1, at p. 8.]

“Section 32, as enacted by Proposition 57, authorizes the California Department of Corrections and Rehabilitation (CDCR) to adopt regulations in furtherance of its resentencing provisions.” *People v. Dynes*, 20 Cal. App. 5th 523, 528 (Ct. App. 2018). In this regard, Section 32 states as follows: “The Department of Corrections and Rehabilitation shall have authority to award credits earned for good behavior and approved rehabilitative or educational achievements.” Cal. Const. art. I, § 32.

1       “Upon the passage of Proposition 57 in the November 2016 elections, the  
2 California Department of Corrections and Rehabilitation (CDCR) issued new regulations  
3 governing the ability of inmates to earn custody credit to advance their parole [or release]  
4 dates.” *People v. Contreras*, 4 Cal. 5th 349, 374 (Cal. 2018). Current regulations state in  
5 part as follows: “Good Conduct Credit shall advance an inmate’s release date if  
6 sentenced to a determinate term. . . .” Cal. Code Regs. tit. 15, §§ 3043; 3043.2. “Inmates  
7 who comply with the regulations and rules of the department and perform the duties  
8 assigned to them shall be eligible to earn Good Conduct Credit as set forth in section  
9 3043.2 of this article. . . . Inmates who do not comply with the regulations and rules of  
10 the department or who do not perform the duties assigned to them shall be subject to  
11 credit forfeiture as provided in this article.” Cal. Code Regs. tit. 15, § 3043. “No credit  
12 shall be awarded for incomplete, partial, or unsatisfactory participation in the credit  
13 earning programs or activities. . . .” Cal. Code Regs. tit. 15, § 3043.

14       Based on these regulations, petitioner’s good conduct claim is comparable to his  
15 parole consideration claim. Even if petitioner could establish that he is entitled to accrue  
16 good conduct credits because of the passage of Proposition 57 and that those credits  
17 should be applied retroactively, it “would not necessarily lead to his immediate or earlier  
18 release from confinement.” *Nettles*, 830 F.3d at 935. As with parole consideration, good  
19 conduct credits are not guaranteed and are only awarded for satisfactory conduct and  
20 participation. Cal. Code Regs. tit. 15, § 3043. Thus, even if petitioner could establish he  
21 is entitled to credits because of the passage of Proposition 57, he would not necessarily be  
22 entitled to earlier release from prison. CDCR would still need to determine whether  
23 those credits should be awarded to petitioner based on his conduct and participation, and  
24 credit could be denied if petitioner’s conduct or participation did not satisfy applicable  
25 standards. Therefore, petitioner’s claim falls “outside the core of habeas corpus.”  
26 *Nettles*, at 934. Under these circumstances, IT IS RECOMMENDED that the District  
27 Court DISMISS petitioner’s claim that his rights to Due Process have been violated,  
28

1 because retroactive accrual of good conduct credits under Proposition 57 is being  
2 withheld from him. [Doc. No. 1, at p. 8.]

3 **IV. State Law Error.**

4 Respondent also argues that petitioner's parole consideration and good conduct  
5 claims do not include a cognizable claim for relief under the Federal Constitution,  
6 because they only allege a potential violation of state law that does not involve a Federal  
7 question. [Doc. No. 6-1, at p. 5.] Respondent is correct.

8 "A mere error of state law is not a denial of due process." *Swarthout v. Cooke*, 562  
9 U.S. 216, 222 (2011) (internal quotations omitted). Here, the gravamen of both claims in  
10 the Petition is that California regulations implementing the benefits of Proposition 57  
11 have been misapplied in petitioner's case in violation of the Due Process Clause.  
12 However, as the Supreme Court held in *Swarthout v. Cooke*, 562 U.S. 216, it is not this  
13 Court's role to determine whether California's laws or regulations were correctly applied  
14 in petitioner's case. *Id.* at 222. For this additional reason, IT IS RECOMMENDED that  
15 the District Court DISMISS the Petition to the extent it seeks a determination based on  
16 California law and regulations that petitioner was erroneously denied the benefits of  
17 parole consideration and good conduct credits under Proposition 57. [Doc. No. 1, at  
18 pp. 7-8.]

19 **Conclusion**

20 Based on the foregoing, IT IS RECOMMENDED that the District Court GRANT  
21 respondent's Motion to Dismiss [Doc. No. 6] "for failure to state a claim upon which  
22 relief can be granted." Fed.R.Civ.P. 12(b)(6).

23 This Report and Recommendation is submitted to the assigned United States  
24 District Judge pursuant to Title 28, United States Code, Section 636(b), and Civil Local  
25 Rules 72.1(d) and HC.2 of the United States District Court for the Southern District of  
26 California.

27 ///

28 ///

1 IT IS HEREBY ORDERED that no later than June 7, 2019 any party to this  
2 action may file and serve written objections to this Report and Recommendation. The  
3 document should be captioned "Objection to Report and Recommendation."

4 IT IS FURTHER ORDERED that any reply to objections shall be filed and served  
5 no later than June 21, 2019. The parties are advised that failure to file objections with  
6 the specified time may waive the right to raise those objections on appeal of this Court  
7 order. *Martinez v. Ylst*, 951 F.2d 1153, 1156 (9th Cir. 1991).

8 IT IS SO ORDERED.

9 Dated: May 16, 2019

A handwritten signature in black ink, appearing to read 'Karen S. Crawford', written over a horizontal line.

Hon. Karen S. Crawford  
United States Magistrate Judge

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

NORMAN BLANCO,

Petitioner,

v.

RALPH DIAZ, Secretary,

Respondent.

Case No.: 18-CV-2005 JLS (KSC)

**ORDER: (1) ADOPTING REPORT  
AND RECOMMENDATION,  
(2) GRANTING RESPONDENT'S  
MOTION TO DISMISS, AND  
(3) DENYING CERTIFICATE OF  
APPEALABILITY**

(ECF Nos. 1, 6, 9)

Presently before the Court is Petitioner Norman Blanco's Petition for Writ of Habeas Corpus ("Pet.," ECF No. 1), as well as Respondent Ralph Diaz's Motion to Dismiss ("Mot.," ECF No. 6).<sup>1</sup> Also before the Court is Magistrate Judge Karen S. Crawford's Report and Recommendation advising the Court to deny the petition ("R&R," ECF No. 9). Having considered the Parties' arguments and the law, the Court (1) **ADOPTS** the R&R in its entirety, (2) **GRANTS** Respondent's Motion, and (3) **DENIES** a Certificate of Appealability.

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<sup>1</sup> Petitioner originally filed his Petition against Respondent Debbie Asuncion, Warden of the California State Prison Los Angeles, *see* Pet.; however, on July 3, 2019, Magistrate Judge Crawford *sua sponte* substituted Ralph Diaz, Secretary of the California Department of Corrections and Rehabilitation, as Respondent given that Petitioner had been temporarily moved to another facility for resentencing. *See generally* ECF No. 11.

## BACKGROUND

Magistrate Judge Crawford's R&R contains a thorough and accurate recitation of the factual and procedural histories underlying the instant motion. R&R at 1–2. This Order incorporates by reference the background as set forth therein.

## LEGAL STANDARD

Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1) set forth a district court's duties regarding a magistrate judge's report and recommendation. The district court "shall make a de novo determination of those portions of the report . . . to which objection is made," and "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1); *see also United States v. Raddatz*, 447 U.S. 667, 673–76 (1980). In the absence of a timely objection, however, "the Court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72 advisory committee's note (citing *Campbell v. U.S. Dist. Ct.*, 501 F.2d 196, 206 (9th Cir. 1974)).

## ANALYSIS

Petitioner raises two grounds for relief, both related to Proposition 57. First, Petitioner contends that his Federal Constitutional rights were violated because he was denied "entitlement to parole considerations" under Proposition 57. *See* Pet. at 6. Second, Petitioner appears to argue that his right to earn good conduct credits under Proposition 57 is being withheld from him in violation of his Due Process rights, which require that the good conduct credits under Proposition 57 be "applied retroactively." *Id.* at 8.

Respondent seeks dismissal of the Petition on grounds that Petitioner's parole review and credit claims (1) do not lie at the core of federal habeas corpus and therefore must be asserted, if at all, under 42 U.S.C. § 1983, *see* Mot. at 2–4; and (2) are nothing more than a challenge to state law and therefore fail to rise to the level of a cognizable federal question meriting federal habeas review. *See id.* at 4–5.

Magistrate Judge Crawford recommends that the Court grant Respondent's Motion on the grounds that Petitioner has "fail[ed] to state a claim upon which relief can be



1 granted.” *See* R&R at 6 (quoting Fed. R. Civ. P. 12(b)(6)). Magistrate Judge Crawford  
 2 recommends that the Court dismiss Petitioner’s claim that his Constitutional rights have  
 3 been violated as a result of his denial of entitlement to parole consideration under  
 4 Proposition 57 because, “even if petitioner could establish that . . . Proposition 57 should  
 5 apply in his case, he would only be eligible for parole consideration at an earlier time than  
 6 might otherwise occur,” meaning “petitioner’s claim falls ‘outside the core of habeas  
 7 corpus.’” *See id.* at 2–4 (quoting *Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016)).  
 8 For the same reason, Magistrate Judge Crawford also recommends that the Court dismiss  
 9 Petitioner’s claim that his rights to Due Process have been violated because retroactive  
 10 accrual of good conduct credits under Proposition 57 is being withheld from him. *See id.*  
 11 at 4–6. Finally, Magistrate Judge Crawford recommends that the Court dismiss the Petition  
 12 to the extent it seeks a determination based on California law and regulations that Petitioner  
 13 was erroneously denied the benefits of parole consideration and good conduct credits under  
 14 Proposition 57 because those claims do not include a cognizable claim for relief under the  
 15 Federal Constitution. *See id.* at 6.

16 Because Petitioner failed timely to object to Magistrate Judge Crawford’s R&R, the  
 17 Court reviews the R&R for clear error. Having reviewed the R&R, the Court finds that it  
 18 is well reasoned and contains no clear error. Accordingly, the Court **ADOPTS** in its  
 19 entirety Magistrate Judge Crawford’s R&R (ECF No. 9) and **GRANTS** Respondent’s  
 20 Motion (ECF No. 6).

### 21 **CERTIFICATE OF APPEALABILITY**

22 The Court is also obliged to determine whether to issue a certificate of appealability  
 23 (“COA”) in this proceeding. A COA is authorized “if the applicant has made a substantial  
 24 showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “Where a district  
 25 court has rejected the constitutional claims on the merits, . . . [t]he petitioner must  
 26 demonstrate that reasonable jurists would find the district court’s assessment of the  
 27 constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).  
 28 When “the district court denies a habeas petition on procedural grounds without reaching

1 the prisoner's underlying constitutional claim, a COA should issue when the prisoner  
2 shows, at least, that jurists of reason would find it debatable whether the petition states a  
3 valid claim of the denial of a constitutional right and that jurists of reason would find it  
4 debatable whether the district court was correct in its procedural ruling." *Id.* "Where a  
5 plain procedural bar is present and the district court is correct to invoke it to dispose of the  
6 case, a reasonable jurist could not conclude either that the district court erred in dismissing  
7 the petition or that the petitioner should be allowed to proceed further. In such a  
8 circumstance, no appeal would be warranted." *Id.*

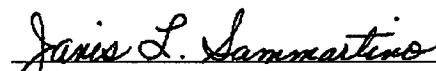
9 Because the Court finds that no reasonable jurist would find it debatable whether the  
10 Court was correct in its determination that Petitioner is not entitled to federal habeas corpus  
11 relief, the questions presented by the Petition do not warrant further proceedings.  
12 Accordingly, the Court **DENIES** a COA.

### 13 **CONCLUSION**

14 For the reasons stated above, the Court (1) **ADOPTS** the R&R (ECF No. 9) in its  
15 entirety, (2) **GRANTS** Respondent's Motion (ECF No. 6), and (3) **DENIES** a Certificate  
16 of Appealability. Because this Order concludes the litigation in this matter, the Clerk of  
17 the Court **SHALL CLOSE** the file.

18 **IT IS SO ORDERED.**

19  
20 Dated: August 6, 2019

  
Hon. Janis L. Sammartino  
United States District Judge



**United States District Court**  
**SOUTHERN DISTRICT OF CALIFORNIA**

Norman P. Blanco

**Plaintiff,**

**V.**

Debbie Asuncion; Office of the Attorney  
General; Ralph Diaz, Secretary

**Defendant.**

**Civil Action No. 18CV2005-JLS(KSC)**

**JUDGMENT IN A CIVIL CASE**

**Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

**IT IS HEREBY ORDERED AND ADJUDGED:**

The report and recommendation is adopted. Respondent's motion to dismiss is granted. A certificate of appealability is denied.

**Date:** 8/6/19

**CLERK OF COURT**

**JOHN MORRILL, Clerk of Court**

By: s/ J. Petersen

J. Petersen, Deputy