APPENDIX "A"

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALBERT L. WATSON, Petitioner-Appellant, v. STU SHERMAN, Warden; XAVIER BECERRA, Respondents-Appellees.	No. 21-55098 D.C. No. 5:19-cv-01780-JLS-MAA Central District of California, Riverside ORDER

Before: CANBY and OWENS, Circuit Judges.

This appeal is from the denial of appellant's 28 U.S.C. § 2254 petition and subsequent Federal Rule of Civil Procedure 59(e) motion. The request for a certificate of appealability is denied because appellant has not shown that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); *United States v. Winkles*, 795 F.3d 1134, 1143 (9th Cir. 2015); *Lynch v. Blodgett*, 999 F.2d 401, 403 (9th Cir. 1993) (order).

Any pending motions are denied as moot.

DENIED.

APPENDIX "B"

Could you Please send me a Copy for my records

Mr. Albert L. Watson
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In Pro-Se

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ALBERT L. WATSON,

Petitioner-Appellant,

vs.

STU SHERMAN, Warden; XAVIER BECERRA,

Respondents-Appellees.

No. 21-55098

D.C. No. 5:19-cv-01780-JLS-MAA
Central District California
Riverside

MOTION FOR HEARING EN BANC
Per FRAP rule 35.

To the Chief Judge of the Ninth Circuit and the ten (10) selected justices of the full reviewing court, pursuant to FRAP rule 35 and Local Rules (LR) 35-1, 35-2, 35-3 and 35-4. PLEASE TAKE NOTICE, the panel hearing appellant's COA rendered a decision that convicts with the cases cited in the order as well as cases cited in the appellant's responses in the lower courts (state and federal). Additionally, the court's decision ignores all the facts and evidence supplied by the appellant.

The proceeding involve multiple questions of exceptional importance, each of which are as follows:

1. District court claimed to have followed the well known "LOOK THROUGH STANDARD" R&R pg. 8 lines 10-12 But there was NO REASONED OPINION rendered by state appellate court to look through to. see Ylst v. Nunemaker, 501 U.S. 797, 803-804

2. District Court failed and refused to acknowledge the absence of valid subject matter jurisdiction in state court. Hurtado v. California, 110 U.S. 516, 538.

3. Trial and Appellate counsel's failure to present evidence or attempt to acquire evidence in Appellant's defense. Ass cited in Tollett v. henderson, 36 L.Ed. 2d. 235, 244.

4. In absence of any FINDING OF FACTS on the issues presented to the state courts, the district court was under a legal obligation to hold an evidentiary hearing. But failed to do so. see Townsend v. Sain, 372 U.S. 293.

The cases cited in the two judge denial of the COA claim that appellant is not entitled to such a COA. This is ONLY true if the record contains no evidence to support appellant's Claims. And if there is at least one reasoned OPINION in any of the lower courts proceedings.

> "Each component of the § 2253(c) showing is part of a threshold inquiry, and a court may find that it can dispose of the application in a fair and prompt manner if it proceeds first to resolve the issue whose answer is more apparent from the record and arguments. The recognition that the 'court will not pass upon a constitutional question although properly presented by the record, if there is also presented some other ground upon which the case may be disposed of,' Ashwander 297 U.S. @ 347"
> Slack v. McDaniel, 529 U.S. 473, 485

And this case cited above is one of the case, in fact the lead case cited by the two judge order denying appellant's COA. So the question becomes: How can the court's examination of the district court record use but fail to cite what "Other ground upon which the case may be disposed of" on?

***** PROOF OF SERVICE BY MAIL *****

Daniel Roger, dba Deputy Attorney General
600 west Broadway suite 1800
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Mailing date under PRISON MAILBOX RULE June 20, 2022

/s/ Albert L Watson
Mr. Albert L. Watson, Pro-Per

APPENDIX "C"

Albert L. Watson BD-9104
Substance Abuse Treatment Facility and State Prison
PO Box 5248
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MIME-Version:1.0 From:cacd_ecfmail@cacd.uscourts.gov To:ecfnef@cacd.uscourts.gov Message-Id:<30197256@cacd.uscourts.gov>Subject:Activity in Case 5:19-cv-01780-JLS-MAA Albert L. Watson v. Stu Sherman et al Report and Recommendation (Issued) Content-Type: text/html

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing
The following transaction was entered on 7/21/2020 at 3:40 PM PDT and filed on 7/21/2020

Case Name:	Albert L. Watson v. Stu Sherman et al
Case Number:	5:19-cv-01780-JLS-MAA
Filer:	
Document Number:	22

Docket Text:
REPORT AND RECOMMENDATION issued by Magistrate Judge Maria A. Audero. IT THEREFORE IS RECOMMENDED that the District Court issue an Order: (1) accepting this Report and Recommendation, and (2) directing that judgment be entered denying the Petition and dismissing this action with prejudice. [1] (es)

5:19-cv-01780-JLS-MAA Notice has been electronically mailed to:
Daniel Brian Rogers docketingsdawt@doj.ca.gov, daniel.rogers@doj.ca.gov, salina.powell@doj.ca.gov
Attorney General sdagdocketing@doj.ca.gov
5:19-cv-01780-JLS-MAA Notice has been delivered by First Class U. S. Mail or by other means BY THE FILER to :
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BD-9104
Substance Abuse Treatment Facility and State Prison
PO Box 5248
Corcoran CA 93212
US

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ALBERT L. WATSON, Petitioner, v. STU SHERMAN, Respondent.	Case No. 5:19-cv-01780-JLS (MAA) **REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

This Report and Recommendation is submitted to the Honorable Josephine L. Staton, 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.

I. INTRODUCTION

On September 5, 2019, Petitioner Albert L. Watson ("Petitioner") initiated this action by filing a Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254 ("Petition"). (Pet., ECF No. 1.) Petitioner

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raises four claims challenging his state criminal convictions. (*Id.*, at 6–9.)[1] As discussed below, the Court recommends that the Petition be denied and that this action be dismissed with prejudice.

II. PROCEDURAL SUMMARY

On May 4, 2017, in Riverside County Superior Court, the prosecution filed an amended felony complaint charging Petitioner with the following four counts, each of which were based on a March 24, 2017 domestic violence incident: (1) inflicting corporal injury resulting in traumatic condition on a spouse or cohabitant (Cal. Penal Code § 273.5 subd. (a)); criminal threats to injure (Cal. Penal Code § 422); (3) assault with force likely to produce great bodily injury (Cal. Penal Code § 245 subd. (a), subsec. (4)); and (4) dissuading a witness (Cal. Penal Code § 136.1 subd. (c), subsec. (1)). (CT, at 16–17.) The complaint included special allegations that Petitioner had sustained eight prior felony convictions from 1986 through 2012, providing a basis for sentencing enhancements pursuant to California Penal Code section 667.5(b). (*Id.*, at 17–18.) One of those prior convictions—a 2012 San Bernardino County Superior Court conviction for criminal threats to injure (Cal. Penal Code § 422)—was further alleged to be a serious prior felony offense under California Penal Code section 667.5(a) and a serious or violent felony offense, or "strike," within the meaning of California Penal Code sections 667(c) and (e)(1) and 1170.12(c)(1)(A). (*Id.*, at 19.)

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[1] Pinpoint citations of briefs and Lodged Documents ("LD") (LD, ECF Nos. 11-5 to -12) in this Report and Recommendation refer to the page numbers appearing in the ECF-generated headers. Pinpoint citations of the Reporter's Transcript ("RT," ECF No. 11-1), Clerk's Transcript ("CT," ECF No. 11-2), Supplemental Clerk's Transcript ("Supp. CT," ECF No. 11-3), and Second Supplemental Clerk's Transcript ("2d Supp. CT," ECF No. 11-4) refer to the transcripts' own volume- and page-numbering schemes.

Pursuant to a negotiated plea deal, Petitioner pleaded guilty to the following charges: (1) willful infliction of corporal injury resulting in a traumatic condition against his then-cohabitant, A.D. (Cal. Penal Code § 273.5, subd. (a)); and (2) dissuading a witness or victim from testifying (Cal. Penal Code § 236.1, subd. (a)).[2] (RT, at 3–6.) Petitioner also admitted that his 2012 California Penal Code section 422 conviction was a prior serious or violent felony conviction under California Penal Code section 667(c). (*Id.*, at 6; *see* Cal. Penal Code § 667, subd. (c).)

Petitioner executed a written plea form affirming that he had been advised of his rights and the consequences of pleading guilty (CT, at 27–28); that he had he not received any threats or pressure to plead guilty and that all promises were contained in the plea form or stated in open court (*id.*, at 27); and that he had adequately discussed his constitutional rights, the consequences of a guilty plea, and any defenses to the charges with his attorney (*id.*, at 28). Petitioner also acknowledged that there was a factual basis for his plea, by initialing the following statement: "Factual basis: I agree that I did the things that are stated in the charges that I am admitting." (*Id.*) At the plea hearing, Petitioner confirmed that he understood his rights and the terms of the plea agreement, and specifically admitted that he had engaged in the charged conduct. (RT, at 3–6.)

In accord with the plea agreement, the trial court sentenced Petitioner to total determinate term of ten years in prison: consecutive sentences of two years for the California Penal Code section 273.5(a) ("Section 273.5(a)") willful infliction of corporal injury conviction and three years for the California Penal Code section 236.1(a) ("Section 236.1(a)") dissuading a witness conviction, which were then

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[2] The complaint was orally amended to include the California Penal Code section 236.1(a) count on August 9, 2017, the date of Petitioner's guilty plea. (2d Supp. CT, at 8.)

doubled because of the prior strike conviction. (RT, at 7; CT, at 36; *see* Cal. Penal Code § 667 subd. (e), subsec. (1).)

Petitioner did not appeal his conviction or sentence to the California Court of Appeal or the California Supreme Court. On March 16, 2018, Petitioner filed a habeas corpus petition in the trial court, asserting that the court engaged in impermissible judicial factfinding in determining that Petitioner's 2012 conviction was a prior strike, thus violating Petitioner's Sixth Amendment right to a jury trial. (CT, at 58–66; *see People v. Gallardo*, 4 Cal. 5th 120 (2017).) The court denied the petition for failure to establish a prima facie claim, stating as follows: "Petitioner has not established the sentence here was unlawful, has not provided any factual or legal basis to support his claim of Sixth Amendment violation, and has provided no basis to disturb the plea agreement he negotiated with the prosecution." (*Id.*, at 67–68.) Petitioner did not appeal that decision.

On September 12, 2018, Petitioner petitioned the trial court for a writ of error *coram nobis*. (*Id.*, at 71–74.) His primary claim was that his guilty plea had been wrongfully induced by false representations by his trial attorney and the prosecutor. (*Id.*) Specifically, he alleged that his attorney told him that the prosecution had a complaint signed by the victim as well as photographs documenting injuries the victim sustained during the incident. (*Id.*, at 72–73.) Petitioner further alleged that, shortly before he decided to plead guilty, the prosecutor presented digital images of "a bruised and battered victim," but "gave no accounting for when said pictures were taken." (*Id.*, at 73.) He stated that he believed these representations to be true at the time, and would not have pleaded guilty otherwise. (*Id.*) He further alleged that he did not discover these misrepresentations until 2019, after the judgment had been entered. (*Id.*) Petitioner also raised two additional claims in his *coram nobis* petition: (1) that the trial court lacked jurisdiction over the criminal proceedings because the felony complaint was defective, as it was not signed by the victim (*id.*, at 71, 74); and (2) that there was no factual basis for the court's finding that his 2012

conviction was a serious or violent felony (*id.*, at 72–74). The trial court summarily denied the petition. (CT, at 120.)

Petitioner appealed the denial of his *coram nobis* petition to the California Court of Appeal. (*Id.*, at 125.) His appellate counsel filed a brief pursuant to *People v. Wende*, 25 Cal. 3d 436 (1979), and *Anders v. California*, 386 U.S. 738 (1967), stating that counsel found no arguable issues and asking the court to conduct an independent review. (LD 1, ECF No. 11-5.) With the Court of Appeal's permission, (*see* LD 2, ECF No. 11-6), Petitioner filed a supplemental brief *pro se* (LD 3, ECF No. 11-7). He raised several arguments, reiterating and expanding on the claims in his habeas and *coram nobis* petitions: (1) that the trial court lacked subject matter jurisdiction over the criminal proceedings because the complaint was signed by the district attorney rather than the victim or another "natural person" (*id.*, at 9–12); (2) that the trial court erred by accepting his guilty plea without determining that there was a factual basis for the plea (*id.*, at 13–15); (3) that the trial court erred by relying on the 2012 judgment of conviction and Petitioner's admission that this conviction was a serious or violent felony (*id.*, at 15–18); (4) that the court's denial of Petitioner's request for a free transcript of his plea and sentencing hearing violated due process (*id.*, at 19–23); and (5) that under a local court rule, the clerk had a duty to supply all parties with copies of the record on appeal, including the plea and sentencing transcript, and that sanctions were appropriate based on the clerk's failure to provide such copies (*id.*, at 23–28).

The Court of Appeal affirmed the trial court's denial of *coram nobis* relief, ruling that Petitioner failed to meet his burden and that an independent review of the record revealed no errors warranting such relief. (LD 4, ECF No. 11-8, at 14–15.) The Court stated that Petitioner could have filed a direct appeal challenging the alleged lack of a factual basis for his guilty plea, but failed to do so. (*Id.*, at 15.) Moreover, Petitioner stipulated that there was a factual basis for his plea. (*Id.*)

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Petitioner sought rehearing (LD 5, ECF No. 11-9), which was denied (LD 6, ECF No. 11-10). He then sought review of the Court of Appeal's decision in the California Supreme Court (LD 7, ECF No. 11-11), which also was summarily denied (LD 8, ECF No. 11-12).

Petitioner initiated this action by filing the Petition on September 5, 2019. (Pet.) On October 17, 2019, Respondent filed an Answer and a Memorandum of Points and Authorities ("Answer MP&A"). (Answer, ECF No. 10; Answer MP&A, ECF No. 10-1.) On November 6, 2019, Petitioner filed a Reply. (ECF No. 12.) The case is now ready for decision.

III. STANDARD OF REVIEW

Pursuant to 28 U.S.C. § 2254(d) ("Section 2254(d)"), as amended by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"):

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

Pursuant to AEDPA, the "clearly established Federal law" that controls federal habeas review of state-court decisions consists of the holdings, as opposed to the dicta, of Supreme Court decisions "as of the time of the relevant state-court decision." *Williams v. Taylor*, 529 U.S. 362, 412 (2000).

Although a state-court decision may be both "contrary to" and "an unreasonable application of" controlling Supreme Court law, the two phrases have

distinct meanings. *See id.* at 391, 412–13. A state-court decision is "contrary to" clearly established federal law if the decision either applies a rule that contradicts binding governing Supreme Court law or reaches a result that differs from the result the Supreme Court reached on "materially indistinguishable" facts. *Early v. Packer*, 537 U.S. 3, 8 (2002) (per curiam); *see also Woods v. Donald*, 135 S. Ct. 1372, 1377 (2015) ("[I]f the circumstances of a case are only 'similar to' our precedents, then the state court's decision is not 'contrary to' the holdings in those cases."). When a state-court decision adjudicating a claim is contrary to controlling Supreme Court law, the reviewing federal habeas court is "unconstrained by § 2254(d)(1)." *See Williams*, 529 U.S. at 406.

State-court decisions that are not "contrary to" Supreme Court law may be set aside on federal habeas review "only if they are not merely erroneous, but 'an *unreasonable* application' of clearly established federal law, or based on 'an *unreasonable* determination of the facts.'" *Packer*, 537 U.S. at 11 (quoting Section 2254(d)). A state-court decision that correctly identifies the governing legal rule may be rejected if it unreasonably applies the rule to the facts of a particular case. *See Williams*, 529 U.S. at 406 (providing, as an example, that a decision may state the *Strickland* standard correctly but apply it unreasonably). However, to obtain federal habeas relief for such an "unreasonable application," a petitioner must show that the state court's application of Supreme Court law was "objectively unreasonable." *Woodford v. Viscotti*, 537 U.S. 19, 27 (2002) (per curiam). An objectively unreasonable application is "not merely wrong; even 'clear error' will not suffice." *White v. Woodall*, 572 U.S. 415, 419 (2014) (quoting *Lockyer v. Andrade*, 538 U.S. 63, 75–76 (2003)). Instead, "a state prisoner must show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Harrington v. Richter*, 562 U.S. 86, 103 (2011). The same standard of objective unreasonableness applies

where the petitioner is challenging the state court's factual findings pursuant to Section 2254(d)(2). *See Miller-El v. Cockrell*, 537 U.S. 322, 340 (2003) ("[A] decision adjudicated on the merits in a state court and based on a factual determination will not be overturned on factual grounds unless objectively unreasonable in light of the evidence presented in the state-court proceeding . . . .").

No Ruling on Claims

The California Court of Appeal rejected the claim Petitioner raises in Ground Two—the alleged lack of a factual basis for his guilty plea—on the merits in a reasoned decision. (LD 4., at 14–15.) The California Supreme Court summarily denied Petitioner's petition without comment. (LD 8.) For the purpose of AEDPA review, the Court looks through the California Supreme Court's summary denial of Petitioner's petition for review to the California Court of Appeal's reasoned decision regarding Ground Two. *See Ylst v. Nunnemaker*, 501 U.S. 797, 803–04 (1991); *Castellanos v. Small*, 766 F.3d 1137, 1145 (9th Cir. 2014). However, because no state court has explicitly addressed the merits of Grounds One, Three, or Four, the Court must conduct an "independent review of the record" to determine whether the California Supreme Court's ultimate decision to deny these claims was contrary to, or an unreasonable application of, clearly established federal law. *See Murray v. Schriro*, 745 F.3d 984, 996–97 (9th Cir. 2014); *Walker v. Martel*, 709 F.3d 925, 939 (9th Cir. 2013).

IV. DISCUSSION

Petitioner raises four claims: (1) the trial court lacked subject matter jurisdiction over the criminal proceedings (purportedly violating the Fifth Amendment), because the complaint was not signed by a victim or witness; (2) the trial court failed to establish a factual basis for his guilty plea to inflicting corporal injury, in violation of the Fourteenth Amendment; (3) the trial court violated the Fourteenth Amendment because it had no proper basis for determining that Petitioner's prior conviction was a serious or violent felony; and (4) the Court of

Appeal violated the First and Fourteenth Amendments by failing to examine or rule on the above claims. (Pet., at 6–9.)

Respondent argues that Petitioner's first claim fails because a guilty plea generally precludes independent claims "relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea" (Answer MP&A, at 6 (quoting *Tollett v. Henderson*, 411 U.S. 258, 267 (1973)).) Respondent also argues that the second and third claims are precluded by the guilty plea. (Answer MP&A, at 6–7.) Respondent argues in the alternative that these claims fail on the merits because Petitioner admitted that there was a factual basis for his plea and admitted that his 2012 conviction was a serious or violent felony. (*Id.*) Respondent also argues that Petitioner's claim that the Court of Appeal failed to address the above three claims fails to state a basis for federal relief because a state court need not explain why each claim is being rejected. (*Id.*, at 7 (citing *Hernandez v. Small*, 282 F.3d 1132, 1140 (9th Cir. 2002)).) Respondent further argues that the Court of Appeal permitted Petitioner to file a supplemental brief, and stated that it had independently reviewed the entire record and found no arguable issues. (Answer MP&A, at 7.)

Petitioner filed a Reply, arguing that the 28 U.S.C. § 2254(d)(1) standard should not apply because the Court of Appeal did not address his claims, and that his guilty plea does not preclude his claims. (Reply, ECF No. 12.)

A. Background

The California Court of Appeal rejected Petitioner's first three claims when it concluded that he did not meet his burden for *coram nobis* relief and that an independent review of the entire record revealed no errors warranting such relief.[3]

[3] Petitioner raised his fourth claim—that the Court of Appeal's decision overlooked his other claims—in his petition for rehearing to the Court of Appeal (LD 5, at 4, 8–

(LD 4, at 14–15.). The Court of Appeal did not explicitly discuss the merits of Petitioner's first or third claims. However, it provided the following reasoning for denying his second claim (that there was no factual basis for the guilty plea):

> A challenge to the adequacy of a trial court's finding of a factual basis for a plea raises an error of law that is cognizable on appeal. (*People v. Palmer* (2013) 58 Cal. 4th 110, 114; *People v. Holmes* (2004) 32 Cal. 4th 432, 440.) Defendant was present at the plea hearing where the court found a factual basis for the plea. Neither defendant nor his counsel objected when the prosecutor indicated there was a sufficient factual basis for the plea. Immediately after the plea hearing in August 2017, defendant could have requested a certificate of probable cause, filed an appeal from his plea, and raised the instant claim asserting the court failed to properly find a factual basis for his plea. (See, e.g., *Holmes,* at p. 438; *People v. Zuniga* (2014) 225 Cal. App. 4th 1178, 1187.) He failed to use due diligence to pursue an available remedy. Furthermore, the superior court previously rejected the purported lack of factual basis for defendant's plea and admission when it denied defendant's habeas petition. Additionally, defendant stipulated to the factual basis in his plea form. In sum, defendant has not met his burden of proof to show he is entitled to relief under *coram nobis.*

(*Id.*)

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9) and his petition for review to the California Supreme Court (LD 7, at 13–14), both of which were summarily denied (LD 6, 8).

B. Discussion

1. Ground One

"When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." *Tollett*, 411 U.S. at 266–67. Thus, Petitioner's guilty plea precludes his federal habeas challenge to the alleged defect in the criminal complaint. *See Mitchell v. Superior Court*, 632 F.2d 767, 769 (9th Cir. 1980) ("As a general rule, one who has voluntarily and intelligently pled guilty to a criminal charge may not subsequently seek federal habeas relief on the basis of pre-plea constitutional violations.").

Even if it were not precluded by Petitioner's guilty plea, this claim would fail. Although Petitioner asserts that the alleged defect in his felony complaint deprived the trial court of subject matter jurisdiction and violated the Fifth Amendment, he cites no legal authority to support these contentions. (*See* Pet., at 6.) A petitioner may seek federal habeas relief from a state-court conviction or sentence "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). Federal habeas relief is not available for errors of state law, and federal courts cannot "reexamine state-court determinations on state-law questions." *Estelle v. McGuire*, 502 U.S. 62, 67–68 (1991); *accord Bradshaw v. Richey*, 546 U.S. 74, 76 (2005) ("We have repeatedly held that a state court's interpretation of state law, including one announced on direct appeal of the challenged conviction, binds a federal court sitting in habeas corpus.").

The procedural requirements for filing a felony complaint in California raise questions of state law that are not cognizable in federal habeas review. Petitioner's attempt to cast this claim as a Constitutional violation by citing the Fifth Amendment is unavailing, as a habeas petitioner may not "transform a state-law issue into a federal one" merely by asserting a violation of the federal constitution.

Langford v. Day, 110 F.3d 1380, 1389 (9th Cir. 1997); *accord Little v. Crawford*, 449 F.3d 1075, 1083 n.6 (9th Cir. 2006) ("We cannot treat a mere error of state law, if one occurred, as a denial of due process; otherwise, every erroneous decision by a state court on state law would come here as a federal constitutional question." (quoting *Hughes v. Heinze*, 268 F.2d 864, 869–70 (9th Cir. 1959))).

Moreover, the amended felony complaint here, which was sworn under penalty of perjury by the District Attorney (CT, at 16–20), complied with the applicable state law—California Penal Code section 806 ("Section 806"). For over a century, California courts have interpreted Section 806 to permit complaints to be sworn by district attorneys. *See People v. Smith*, No. C074734, 2017 Cal. App. Unpub. LEXIS 966, *9 (Cal. Ct. App. Feb. 10, 2017) ("There is nothing in the statute which disqualifies the District Attorney from swearing to the complaint." (quoting *People v. Currie*, 16 Cal. App. 731, 733 (Cal. Dist. Ct. App. 1911))).

For this reason, habeas relief is not available to Petitioner as to Ground One.

2. Ground Two

Petitioner's next claim is that the state trial court failed to establish a factual basis for his guilty plea. (Pet., at 7.) "[T]he [D]ue [P]rocess [C]lause does not impose on a state the duty to establish a factual basis for a guilty plea absent special circumstances[,]" such as "a defendant's specific protestation of innocence[.]" *Rodriguez v. Ricketts*, 777 F.2d 527, 528 (9th Cir. 1985); *see also Loftis v. Almager*, 704 F.3d 645, (9th Cir. 2012) (applying this holding in a no contest plea case). This case poses no such special circumstances: Petitioner openly admitted the factual basis for his plea at the hearing. (RT, at 3–6; *see also* CT, at 28.)

California law requires judges to determine that there is a sufficient factual basis for a guilty plea. *See* Cal. Penal Code § 1192.5; *People v. Holmes*, 32 Cal. 4th 432 (2004). However, any purported violation of this requirement raises a question of state law rather than a federal habeas claim. *See Loftis*, 704 F.3d at 648; *see also*

Estelle, 502 U.S. at 67–68. Thus, Ground Two also fails to provide a basis for federal habeas relief.

3. Ground Three

Next, Petitioner claims that the trial court violated the Fourteenth Amendment because it lacked a factual basis to conclude that his 2012 conviction was a serious or violent felony, which led to a sentencing enhancement under California Penal Code section 667(c). (Pet., at 8.). However, Petitioner admitted at his plea hearing that his prior conviction was a serious or violent felony. (RT, at 6.) As discussed above, federal due process does not require state trial courts to establish a factual basis for a plea absent special circumstances. *Rodriguez*, 777 F.2d at 528. Any asserted errors in the trial court's application of California's procedural requirements for guilty pleas do not state federal claims for habeas relief. *See Loftis*, 704 F.3d at 648. The Ninth Circuit also specifically has refused to consider habeas petitions claiming erroneous application of state sentencing law by state courts. *See, e.g., Miller v. Vasquez*, 868 F.2d 1116, 1118–19 (9th Cir. 1989) (declining to address whether assault with a deadly weapon qualifies as a "serious felony" under California's sentence enhancement provisions because it is a question of state sentencing law, for which habeas relief is unavailable).

Further, *Tollett* provides an independent basis for denying this claim. Although Petitioner's ten-year sentence technically was not imposed "prior to the entry of the guilty plea," he did reach an agreement as to that sentence, as part of the of his plea agreement, prior to the entry of his guilty plea. A number of district courts have found that *Tollett* bars federal habeas challenges to sentences under such circumstances. *See, e.g., Bazley v. Hill*, 2015 U.S. District LEXIS 31341, at *9 (E.D. Cal. Mar. 13, 2015) ("Although the sentencing error asserted here is not a 'pre-plea' error in the usual sense, the sentencing stipulation was part of the plea agreement which was negotiated prior to the entry of the plea. Accordingly,

petitioner's right to challenge his sentence and/or consideration of the prior was extinguished . . . when petitioner pled guilty.") (Citing similar district court cases.) Habeas relief thus is unavailable for Ground Three.

4. Ground Four

Last, Petitioner claims that the Court of Appeal violated the First and Fourteenth Amendments because it "failed and refused to examine and rule on" Grounds One through Three.[4] (Pet., at 9.) The Court of Appeal permitted Petitioner to file a *pro se* supplemental brief after Petitioner's counsel filed a *Wende* brief stating that counsel could identify no arguable issues on appeal. (LD 2, ECF No. 11-6.). In its denial of *coram nobis* relief, the Court of Appeal acknowledged each of the claims Petitioner raised, set forth the demanding standard for *coram nobis* relief, stated that Petitioner failed to meet his burden, and explicitly discussed Petitioner's second claim regarding the purported lack of a factual basis for his guilty plea. (LD 4, at 14–15.). The Court of Appeal did not violate Petitioner's due process or First Amendment rights by its lack of in-depth analysis of Petitioner's

[4] There is a question of whether Petitioner adequately exhausted this claim. A claim is unexhausted for lack of "fair presentation" where it was raised for the first time on discretionary review to the state's highest court and denied without comment. *Casey v. Moore*, 386 F.3d 896, 916 (9th Cir. 2004). Here, Petitioner presented the claim in his petition for rehearing to the Court of Appeal (LD 5, at 4, 8–9) and his petition for review to the California Supreme Court (LD 7, at 13–14), both of which were summarily denied (LD 6, 8). In any event, the exhaustion requirement only applies to claims that are cognizable on federal habeas review–which, as discussed in this section, the Court concludes this claim is not. *See Engle v. Isaac*, 456 U.S. 107, 120 n.19 (1982) ("If a state prisoner alleges no deprivation of a federal right, § 2254 is simply inapplicable. It is unnecessary in such a situation to inquire whether the prisoner preserved his claim before the state courts."); *Gutierrez v. Griggs*, 695 F.2d 1195, 1197–98 (9th Cir. 1983) ("When a state prisoner has failed to allege a deprivation of a federal right, § 2254 does not apply and it is unnecessary for us to determine whether the prisoner satisfied the § 2254(b) exhaustion requirement.").

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ALBERT L. WATSON,

Petitioner,

v.

STU SHERMAN, Warden,

Respondent.

Case No. 5:19-cv-01780-JLS-MAA

ORDER ACCEPTING REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed Petitioner's "Motion to Alter or Amend Under FRCP Rule 59(e)" ("Motion"), the other records on file herein, and the Report and Recommendation of the United States Magistrate Judge.

The Court also has reviewed Petitioner's objections to the Report and Recommendation, which the Court received and filed on December 22, 2020 ("Objections"). (Objs., ECF No. 35.) As required by Federal Rule of Civil Procedure 72(b)(3), the Court has engaged in de novo review of the portions of the Report and Recommendation to which Petitioner specifically has objected.

The Objections lack merit for the reasons stated in the Report and Recommendation. The Court finds no defect of law, fact, or logic in the Report and Recommendation. The Court concurs with and accepts the findings, conclusions,

and recommendations of the United States Magistrate Judge, and overrules the Objections.

IT THEREFORE IS ORDERED that (1) the Report and Recommendation of the Magistrate Judge is accepted; and (2) the Motion is **DENIED**.

DATED: January 20, 2021

JOSEPHINE L. STATON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ALBERT L. WATSON,

Petitioner,

v.

STU SHERMAN, Warden,

Respondent.

Case No. 5:19-cv-01780-JLS-MAA

ORDER DENYING CERTIFICATE OF APPEALABILITY

Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts provides:

> (a) **Certificate of Appealability.** The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, a party may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.

(b) **Time to Appeal.** Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules. A timely notice of appeal must be filed even if the district court issues a certificate of appealability. These rules do not extend the time to appeal the original judgment of conviction.

Pursuant to 28 U.S.C. § 2253(c)(2), a certificate of appealability 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 a habeas petitioner must show that "reasonable jurists could debate whether (or, 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) (citation and quotation marks omitted).

After duly considering Petitioner's contentions, the Court finds that Petitioner has not satisfied the requirements for a certificate of appealability. Accordingly, a certificate of appealability is **DENIED**.

DATED: January 20, 2021

JOSEPHINE L. STATON
UNITED STATES DISTRICT JUDGE

APPENDIX "D"

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 26 2022

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

ALBERT L. WATSON, Petitioner-Appellant, v. STU SHERMAN, Warden; XAVIER BECERRA, Respondents-Appellees.	No. 21-55098 D.C. No. 5:19-cv-01780-JLS-MAA Central District of California, Riverside ORDER

Before: SILVERMAN and M. SMITH, Circuit Judges.

Appellant's motion for reconsideration en banc (Docket Entry No. 9) is denied on behalf of the court. *See* 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11.

No further filings will be entertained in this closed case.