NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BARRY ALAN LAYTON, Petitioner-Appellant, v. STEVEN K. BORDIN, Chief Probation Officer, Butte County, Respondent-Appellee.	No. 15-15319 D.C. No. 2:14-cv-01153-WBS MEMORANDUM* (Filed Mar. 14, 2017)

Appeal from the United States District Court
for the Eastern District of California
William B. Shubb, District Judge, Presiding

Submitted March 8, 2017**

Before: LEAVY, W. FLETCHER, and OWENS, Circuit Judges.

Barry Alan Layton appeals from the district court's judgment denying his 28 U.S.C. § 2254 habeas corpus petition. We have jurisdiction under 28 U.S.C. § 2253. We review a district court's denial of a habeas corpus petition de novo, *see Casey v. Moore*, 386 F.3d 896, 904 (9th Cir. 2004), and we affirm.

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Layton contends that his state conviction for carrying a concealed weapon under California Penal Code § 12025(a)(2) (2011) violates the Second Amendment. The state court's rejection of this claim was not contrary to, or based upon an unreasonable application of, clearly established Supreme Court law. *See* U.S.C. § 2254(d)(1); *see also Peruta v. Cnty. of San Diego*, 824 F.3d 919, 939 (9th Cir. 2016) (en banc) ("[T]he Second Amendment right to keep and bear arms does not include, in any degree, the right of a member of the general public to carry concealed firearms in public.").

We treat Layton's additional argument as a motion to expand the certificate of appealability. So treated, the motion is denied. *See* 9th Cir. R. 22-1(e); *Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999).

AFFIRMED.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BARRY ALAN LAYTON, Petitioner, v. STEVEN K. BORDIN, Respondent.	No. 2:14-cv-1153 WBS GGH P ORDER (Filed Feb. 12, 2015)

Petitioner, a state prisoner proceeding pro se, has filed this application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On February 2, 2015, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. Petitioner has filed objections to the findings and recommendations, and respondent has filed a reply.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed February 2, 2015, are adopted in full;

2. Petitioner's application for a writ of habeas corpus is denied; and

3. The court issues a certificate of appealability pursuant to 28 U.S.C. § 2253 on the question of whether petitioner has made a substantial showing of the denial of his rights under the Second Amendment.

Dated: February 11, 2015

/s/ William B. Shubb
WILLIAM B. SHUBB
UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BARRY ALAN LAYTON, Petitioner, v. STEVEN K. BORDIN, Respondent.	No. 2:14-cv-01153-WBS-GGH FINDINGS AND RECOMMENDATIONS (Filed Feb. 2, 2015)

INTRODUCTION AND SUMMARY

Petitioner, a former county prisoner currently serving a three-year term of probation, is proceeding through retained counsel with a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner was convicted of resisting a peace officer and carrying a concealed weapon. He was sentenced to a three-year term of probation with various conditions, including 45 days in county jail. Petitioner challenges his conviction on the following grounds: 1) his conviction for carrying a concealed firearm was unconstitutional in violation of the Second Amendment; and 2) his conviction for obstructing, delaying, or resisting a peace officer was supported by insufficient evidence in violation of the Due Process Clause.

Upon careful consideration of the record and the applicable law, the undersigned will recommend that petitioner's application for habeas corpus relief be denied.

BACKGROUND

On the evening of December 9, 2011, petitioner's elderly mother, Lynn Layton, had fallen near the parking lot of Pelican's Roost restaurant, located in the Town of Paradise. RT 187. Mr. and Mrs. Crotwell were leaving the restaurant when they observed Ms. Layton on the ground and saw petitioner trying to help her up. RT 62. They tried to assist Ms. Layton as she lay in the parking lot, but petitioner rejected the Crotwells, stating that his mother "needs to do it." RT 61-64. Petitioner began to pull on one of Ms. Layton's arms to help her up. RT 64-65, 76. When Mr. Crotwell approached to assist, petitioner reacted angrily and put his finger in Mr. Crotwell's face. RT 66, 76. Mrs. Crotwell ran back into the restaurant for help. RT 77. After Mrs. Crotwell went back inside the restaurant, a busboy employed by the restaurant went outside to help Ms. Layton. RT 89. However, Petitioner stopped the busboy, yelling and cursing at him. RT 91-92. Mr. Crotwell retreated and called 911. RT 77, 81-82.

Paradise Police Officer Wright and supervising Watch Commander Sergeant Gallagher arrived in response to calls for service which initially requested medical aid but changed to a person that was being combative and assaulting the public. RT at 95, 114, 137-38. Mr. Crotwell directed them to petitioner and his parents. RT at 115-16. Officer Wright was also informed that petitioner was the person demonstrating assaultive behavior. RT 96. Officer Wright approached petitioner to investigate both the medical issue and the reported assault. RT at 98-99. Petitioner denied a

crime had occurred. RT at 99, 117. According to Officer Wright, Ms. Layton appeared to require help moving, and Officer Wright moved to help her. RT at 100. Intervening, petitioner grabbed Officer Wright's arm and threw it to the side. RT at 101, 118. After seeing petitioner go "hands-on" with Officer Wright, Sergeant Gallagher approached and ordered petitioner to move to a location away from his parents. RT at 118. Petitioner refused to comply. RT at 119. Subsequently, petitioner was placed in handcuffs. RT at 119-21. Petitioner was searched and a loaded firearm was recovered from the pocket of the jacket he wore. RT at 124-26. He lacked a permit for the firearm. RT at 126-27. A folding knife was later recovered from his person. RT at 131.

DISCUSSION

I. AEDPA Standards

The statutory limitations of federal courts' power to issue habeas corpus relief for persons in state custody is provided by 28 U.S.C. § 2254, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). The text of § 2254(d) states:

> 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.

As a preliminary matter, the Supreme Court has recently held and reconfirmed "that § 2254(d) does not require a state court to give reasons before its decision can be deemed to have been 'adjudicated on the merits.'" *Harrington v. Richter*, 131 S.Ct. 770, 785 (2011). Rather, "when a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary." *Id.* at 784-785, citing *Harris v. Reed*, 489 U.S. 255, 265, 109 S.Ct. 1038 (1989) (presumption of a merits determination when it is unclear whether a decision appearing to rest on federal grounds was decided on another basis). "The presumption may be overcome when there is reason to think some other explanation for the state court's decision is more likely." *Id.* at 785.

The Supreme Court has set forth the operative standard for federal habeas review of state court decisions under AEDPA as follows: "For purposes of § 2254(d)(1), 'an *unreasonable* application of federal law is different from an *incorrect* application of federal law.'" *Harrington*, 131 S.Ct. at 785, citing *Williams v.*

Taylor, 529 U.S. 362, 410, 120 S.Ct. 1495 (2000). "A state court's determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the correctness of the state court's decision." *Id.* at 786, citing *Yarborough v. Alvarado*, 541 U.S. 652, 664, 124 S.Ct. 2140 (2004).

Accordingly, "a habeas court must determine what arguments or theories supported or . . . could have supported[ ] the state court's decision; and then it must ask whether it is possible fairminded jurists could disagree that those arguments or theories are inconsistent with the holding in a prior decision of this Court." *Id.* "Evaluating whether a rule application was unreasonable requires considering the rule's specificity. The more general the rule, the more leeway courts have in reaching outcomes in case-by-case determinations.'" *Id.* Emphasizing the stringency of this standard, which "stops short of imposing a complete bar of federal court relitigation of claims already rejected in state court proceedings[,]" the Supreme Court has cautioned that "even a strong case for relief does not mean the state court's contrary conclusion was unreasonable." *Id.*, citing *Lockyer v. Andrade*, 538 U.S. 63, 75, 123 S.Ct. 1166 (2003).

The undersigned also finds that the same deference is paid to the factual determinations of state courts. Under § 2254(d)(2), factual findings of the state courts are presumed to be correct subject only to a review of the record which demonstrates that the factual finding(s) "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." It makes no sense to interpret "unreasonable" in § 2254(d)(2) in a manner different from that same word as it appears in § 2254(d)(1) – *i.e.*, the factual error must be so apparent that "fairminded jurists" examining the same record could not abide by the state court factual determination. A petitioner must show clearly and convincingly that the factual determination is unreasonable. *See Rice v. Collins*, 546 U.S. 333, 338, 126 S.Ct. 969, 974 (2006).

The habeas corpus petitioner bears the burden of demonstrating the objectively unreasonable nature of the state court decision in light of controlling Supreme Court authority. *Woodford v. Viscotti*, 537 U.S. 19, 123 S. Ct. 357 (2002). Specifically, the petitioner "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*, 131 S.Ct. at 786-787. "Clearly established" law is law that has been "squarely addressed" by the United States Supreme Court. *Wright v. Van Patten*, 552 U.S. 120, 125, 128 S.Ct. 743, 746 (2008). Thus, extrapolations of settled law to unique situations will not qualify as clearly established. *See e.g.*, *Carey v. Musladin*, 549 U.S. 70, 76, 127 S.Ct. 649, 653-54 (2006) (established law not permitting state sponsored practices to inject bias into a criminal proceeding by compelling a defendant to wear prison clothing or by unnecessary showing of uniformed guards does not qualify as clearly established

law when spectators' conduct is the alleged cause of bias injection). The established Supreme Court authority reviewed must be a pronouncement on constitutional principles, or other controlling federal law, as opposed to a pronouncement of statutes or rules binding only on federal courts. *Early v. Packer*, 537 U.S. 3, 9, 123 S. Ct. 362, 366 (2002).

When a state court decision on a petitioner's claims rejects some claims but does not expressly address a federal claim, a federal habeas court must presume, subject to rebuttal, that the federal claim was adjudicated on the merits. *Johnson v. Williams*, ___ U.S. ___, 133 S.Ct. 1088, 1091 (2013).

The state courts need not have cited to federal authority, or even have indicated awareness of federal authority in arriving at their decision. *Early*, 537 U.S. at 8, 123 S.Ct. at 365. Where the state courts have not addressed the constitutional issue in dispute in any reasoned opinion, the federal court will independently review the record in adjudication of that issue. "Independent review of the record is not de novo review of the constitutional issue, but rather, the only method by which we can determine whether a silent state court decision is objectively unreasonable." *Himes v. Thompson*, 336 F.3d 848, 853 (9th Cir. 2003).

Finally, if the state courts have not adjudicated the merits of the federal issue, no AEDPA deference is given; the issue is reviewed *de novo* under general principles of federal law. *Stanley v. Cullen*, 633 F.3d 852, 860 (9th Cir. 2012).

II. <u>Second Amendment Claim</u>

Petitioner contends his conviction for carrying a concealed firearm violated his Second Amendment rights because the California statutes on carrying concealed firearms and the related requirement of county-issued concealed weapons permits are invalid under *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010) and *Peruta v. County of San Diego*, 742 F.3d 1144 (9th Cir. 2014). Respondent contends there is no clearly established law that squarely addresses the issue of firearm possession outside of the home.

In *Heller*, a D.C. special police officer challenged D.C.'s gun control laws. The laws made it a crime to carry unregistered firearms but prohibited registration of handguns. *Id.* at 574. The laws gave the chief of police discretion to issue licenses to carry handguns. *Id.* at 575. In addition, the laws required "residents to keep their lawfully-owned arms, such as registered long guns, 'unloaded and disassembled or bound by a trigger lock or similar device' unless they are located in a place of business or are being used for lawful recreational activities." *Id.* The D.C. police officer, authorized to carry a handgun while on duty, applied for a certificate to keep a handgun at home. *Id.* at 576. The District refused. *Id.* The police officer then filed a civil action arguing that the D.C. gun control laws violate the Second Amendment and thus should be permanently enjoined. *See Parker v. District of Columbia*, 311 F.Supp.2d 103, 109 (2004). The District Court dismissed the complaint and the Court of Appeals for the

District of Columbia Circuit reversed. *Heller*, 554 U.S. at 576. The Supreme Court held that the District of Columbia's gun control laws violated the Second Amendment. *Id.* at 635 ("In sum, we hold that the District's ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense.").

Subsequently, the Supreme Court concluded "that the Second Amendment right is fully applicable to the States." *McDonald*, 561 U.S. at 750. In *McDonald*, several Chicago residents desired to keep handguns in their homes for self-defense but were prohibited by Chicago's firearms laws. *Id.* Chicago's firearm laws were such that they effectively banned "handgun possession by almost all private citizens who reside in the City." *Id.* The residents filed suit against the city seeking a declaration that the handgun laws violated the Second and Fourteenth Amendments to the United States Constitution. *Id.* at 752. The Supreme Court held that "the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in *Heller*," and the Chicago gun laws violated that right. *Id.* at 791.

Recently, the Ninth Circuit has held that a county's " 'good cause' permitting requirement impermissibly infringes on the Second Amendment right to bear arms in lawful self-defense." *Peruta*, 742 F.3d at 1179. In *Peruta*, residents of San Diego County sought concealed-carry licenses and were denied because "they could not establish 'good cause' or decided not to

apply, confident that their mere desire to carry for self-defense would fall short of establishing 'good cause' as the County defines it." *Id.* at 1148. The Ninth Circuit explained:

> It doesn't take a lawyer to see that straightforward application of the rule in *Heller* will not dispose of this case. It should be equally obvious that neither *Heller* nor *McDonald* speaks explicitly or precisely to the scope of the Second Amendment right outside the home or to what it takes to "infringe" it. Yet, it is just as apparent that neither opinion is silent on these matters, for, at the very least, "the Supreme Court's approach . . . points in a general direction." To resolve the challenge to the D.C. restrictions, the *Heller* majority described and applied a certain methodology: it addressed, first, whether having operable handguns in the home amounted to "keep[ing] and bear[ing] Arms" within the meaning of the Second Amendment and, next, whether the challenged laws, if they indeed did burden constitutionally protected conduct, "infringed" the right.

Id. at 1150 (internal citation omitted). The Ninth Circuit performed that analysis and concluded that the right to carry an operable handgun outside the home for self-defense constitutes "bear[ing] Arms" within the meaning of the Second Amendment and that the "good cause" permitting requirement infringed on that right. *Id.* at 1166, 1179.

As respondent asserts, neither *Heller* nor *McDonald* is controlling in this case and thus neither can stand as "clearly established law" under AEDPA. In *White v. Woodall*, the Supreme Court stated that "state courts must reasonably apply the rules 'squarely established' by this Court's holdings to the facts of each case." 134 S.Ct. 1697, 1706 (quoting *Knowles v. Mirzayance*, 556 [sic] 111, 122, 129 S.Ct. 1411, 173 L.Ed.2d 251 (2009). As explained above, *Heller* and *McDonald* establish that there is a Second Amendment right to keep a handgun as well as an operable firearm in the home. Such a rule does not "establish" a rule for the situation at hand where petitioner was arrested outside of the home and found to be carrying a handgun without a concealed weapons permit.

Peruta is not controlling because it did not strike down the California law requiring a license to carry a concealed weapon. 742 F.3d at 1172 ("To be clear, we are not holding that the Second Amendment requires the states to permit concealed carry."). But the larger point here is that even if *Peruta* could be held to favor petitioner's position, AEDPA commands that the federal "established" authority be that of the United States Supreme Court. That Court has cautioned on numerous occasions that circuit authority will not establish a federal rule for AEDPA purposes. *See Parker v. Matthews*, ___ U.S. ___, 132 S.Ct. 2148, 2155-56 (2012)

Insufficient Evidence

Petitioner contends that his due process rights had been violated because his conviction for obstructing, delaying or resisting a peace officer was not supported by sufficient evidence. When a challenge is brought alleging insufficient evidence, federal habeas corpus relief is available if it is found that upon the record evidence adduced at trial, viewed in the light most favorable to the prosecution, no rational trier of fact could have found "the essential elements of the crime" proven beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). *Jackson* established a two-step inquiry for considering a challenge to a conviction based on sufficiency of the evidence. *United States v. Nevils*, 598 F.3d 1158, 1164 (9th Cir.2010) (en banc).

> First, a reviewing court must consider the evidence presented at trial in the light most favorable to the prosecution. *Jackson*, 443 U.S. at 319, 99 S.Ct. 2781 . . . [W]hen "faced with a record of historical facts that supports conflicting inferences" a reviewing court "must presume – even if it does not affirmatively appear in the record – that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution." *Id.* at 326, 99 S.Ct. 2781; *see also McDaniel*, 130 S.Ct. at 673-74.
>
> Second, after viewing the evidence in the light most favorable to the prosecution, the reviewing court must determine whether this evidence, so viewed, is adequate to allow "any

> rational trier of fact [to find] the essential elements of the crime beyond a reasonable doubt." *Jackson*, 443 U.S. at 319, 99 S.Ct. 2781.
>
> [¶] . . . [¶]
>
> At this second step, we must reverse the verdict if the evidence of innocence, or lack of evidence of guilt, is such that all rational fact finders would have to conclude that the evidence of guilt fails to establish every element of the crime beyond a reasonable doubt." *See id.*

Id.

Superimposed on these already stringent insufficiency standards is the AEDPA requirement that even if a federal court were to initially find on its own that no reasonable jury should have arrived at its conclusion, the federal court must also determine that the state appellate court could not have affirmed the verdict under the *Jackson* standard in the absence of an unreasonable determination. *Juan H. v. Allen*, 408 F.3d 1262, 1274 (9th Cir. 2005).

A federal habeas court determines sufficiency of the evidence in reference to the substantive elements of the criminal offense as defined by state law. *See Jackson*, 443 U.S. at 324 n. 16. To establish a violation of California Penal Code section 148(a)(1), the prosecution must prove: "'(1) the defendant willfully resisted, delayed, or obstructed a peace officer, (2) when the officer was engaged in the performance of his or her

duties, and (3) the defendant knew or reasonably should have known that the other person was a peace officer engaged in the performance of his or her duties.'" *Smith v. City of Hemet*, 394 F.3d 689, 695 (9th Cir. 2005) (quoting *In re Muhammed C.*, 95 Cal. App. 4th 1325, 1329 (2002)).

Based on the testimony of Officer Wright and Sergeant Gallagher, a fairminded jurist could have found the essential elements of Penal Code Section 148 beyond a reasonable doubt – that petitioner resisted, delayed, or obstructed Officer Wright and Sergeant Gallagher in their investigation of an assault at the Pelican's Roost. Certainly, the California courts were not unreasonable in so finding. On December 9, 2011 at approximately 6:30 p.m., they responded to a call for service at Pelican's Roost. RT 95, 113. The cause for service was initially a medical aid of an elderly person but had changed to a person that was being combative and assaulting the public. RT 95, 114. Arriving at the scene in a marked car and in uniform, Officer Wright observed petitioner and his parents walking to the parking lot. RT 96-97. He was informed by [sic] that petitioner was the person demonstrating assaultive behavior. RT 96. Officer Wright approached petitioner to speak with him. RT 98. Petitioner responded that he did not need Officer Wright's help. RT 99. Officer Wright further indicated that he was trying to investigate a crime to which petitioner responded "there is no crime here." RT 99, 117. Officer Wright described petitioner as short and belligerent. RT 99. Officer Wright then asked Ms. Layton if she needed medical attention

to which she stated that she did not. RT 99-100. He stated that he needed to speak with petitioner and asked Ms. Layton to go to the car. RT 99. Based on his observations, Officer Wright believed Ms. Layton needed help so he tried to escort her to the car. RT 100. As Officer Wright motioned to help petitioner's mother, petitioner grabbed Officer Wright's arm and pulled him away. RT 100-01, 118. After seeing petitioner go "hands-on" with Officer Wright, Sergeant Gallagher approached and ordered petitioner to move to a location away from his parents. RT 118. Petitioner refused to comply. RT 119. He was then placed in handcuffs. RT 119-21.

Petitioner contends the officers exceeded the scope of their duties when they arrived at the Pelican's Roost. Petitioner characterizes Officer Wright and Sergeant Gallagher as officious intermeddlers, responding to a false report that an assault had occurred. Nonetheless, petitioner concedes that they were entitled to investigate that report and that petitioner was "remonstrating with Officer Wright." ECF No. 1 at 31. None of these assertions negates the following facts: 1) the officers responded to a call for service to investigate an assault, 2) petitioner was identified as the person who exhibited assaultive behavior, and 3) petitioner grabbed the arm of Officer Wright. Petitioner also argues, without supporting authority, that he engaged in protected speech during the confrontation, by asserting his purported right to escort his mother to the car. Even if the act of escorting his mother in a parking lot were protected activity, petitioner's act of

grabbing Officer Wright's arm surely is not. Petitioner's contentions that the officers exceeded the scope of their duties and that his arrest was violation of his First Amendment rights are without merit. Petitioner's sufficiency of evidence claim should be denied.

CONCLUSION

For all the foregoing reasons, the petition should be denied. Pursuant to Rule 11 of the Federal Rules Governing Section 2254 Cases, this court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. A certificate of appealability may issue only "if the applicant has made a substantial showing of the denial of a constitution [sic] right." 28 U.S.C. § 2253(c)(2). For the reasons set forth in these findings and recommendations, a substantial showing of the denial of a constitutional right has not been made in this case.

Accordingly, IT IS HEREBY RECOMMENDED that:

1. Petitioner's application for a writ of habeas corpus be denied; and

2. The District Court decline to issue a certificate of appealability.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party

may file written objections with the court and serve a copy on all parties. Such a documents [sic] should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be served and filed within fourteen days after service of the objections. Failure to file objections within the specified time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

Dated: February 1, 2015

/s/ Gregory G. Hollows
UNITED STATES
MAGISTRATE JUDGE

SUPERIOR COURT OF CALIFORNIA
COUNTY OF BUTTE

People of the State of California, Plaintiff/Respondent, vs. Barry Alan Layton, Defendant/Appellant	)))))))	Butte County No APP3932 **RULING** (Filed Dec. 2, 2013)

The above-entitled matter came on for hearing on November 22, 2013, before the Honorable Clare Keithley, Honorable Tamara L. Mosbarger, and Honorable Barbara L. Roberts. Plaintiff/Respondent was represented by Leah Payne; Defendant/Appellant was not personally present, and was represented by James M. Warden.

The judgment is affirmed.

Dated: 12/2/2013

/s/ Clare Keithley
Hon. Clare Keithley,
Judge of the Superior Court

/s/ Tamara L. Mosbarger
Hon. Tamara L. Mosbarger,
Judge of the Superior Court

/s/ Barbara L. Roberts
Hon. Barbara L. Roberts,
Judge of the Superior Court

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BARRY ALAN LAYTON, Petitioner-Appellant, v. STEVEN K. BORDIN, Chief Probation Officer, Butte County, Respondent-Appellee.	No. 15-15319 D.C. No. 2:14-cv-01153-WBS Eastern District of California, Sacramento ORDER (Filed Oct. 2, 2017)

Before: LEAVY, W. FLETCHER, and OWENS, Circuit Judges.

On September 26, 2017, Layton filed a letter with the court indicating that he no longer wishes to pursue rehearing of our decision in this appeal. We treat this letter as a motion to voluntarily withdraw his pending petition for panel rehearing and rehearing en banc (Docket Entry No. 19). So treated, the motion is granted. This case is closed. The mandate will issue in due course.