

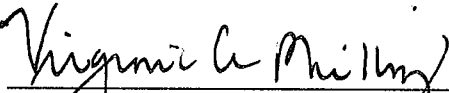


1 Rasberry v. Garcia, 448 F.3d 1150, 1154 (9th Cir. 2006) (district court properly  
2 dismissed untimely, wholly unexhausted habeas petition).

3 In the present case, the Magistrate Judge correctly concluded that Petitioner  
4 did not fairly present her double jeopardy challenge as articulated in her third claim  
5 to any state court. Indeed, Petitioner admits that she chose not to present the  
6 federal constitutional claim in her renewed state habeas petition even though the  
7 Court previously informed her that the claim was not exhausted. (Docket # 29  
8 at 3.) The Court agrees with the Magistrate Judge's decision that the federal claim  
9 is unexhausted; dismissal of the petition correctly follows from that conclusion.  
10 The Court therefore accepts the findings and recommendation of the Magistrate  
11 Judge.

12 IT IS ORDERED that Judgment be entered granting the motion to dismiss  
13 the Second Amended Petition and dismissing this action without prejudice.

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15 DATE: Sept 6 2011  
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19 HON. VIRGINIA A. PHILLIPS  
20 UNITED STATES DISTRICT JUDGE  
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