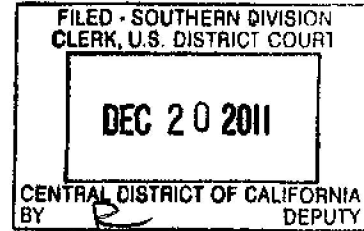


1 I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY
2 FIRST CLASS MAIL POSTAGE PREPAID, TO ~~ALL COUNSEL~~ *Petitioner*
(OR PARTIES) AT THEIR RESPECTIVE MOST RECENT ADDRESS OF
RECORD IN THIS ACTION ON THIS DATE.

3 DATED: 12-20-11
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6
7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA

9 PETER V. BASHKIROFF,) Case No. CV 11-5219-JSL (JPR)
10)
11) Petitioner,)
12) vs.) ORDER ACCEPTING FINDINGS AND
13) MARK VARELA, Director,) RECOMMENDATIONS OF U.S.
14)) MAGISTRATE JUDGE
15) Respondent.)

16 Pursuant to 28 U.S.C. § 636, the Court has reviewed the
17 Petition, all the records and files of this case, and the Report
18 and Recommendation of the U.S. Magistrate Judge. The Petitioner
19 filed "Objections & Opposition" to the Report and Recommendation,
20 and the Court has made a de novo determination of those portions of
21 the Report and Recommendation to which objections have been made.

22 In his objections, Petitioner contends that Sanders v. Ryder,
23 342 F.3d 991 (9th Cir. 2003), controls this case and mandates that
24 he be found to have "fairly presented" his ineffective-assistance-
25 of-counsel claims to the California Supreme Court. Sanders held
26 that in some circumstances the mere invocation of the words
27 "ineffective assistance of counsel" is enough by itself to fairly
28 present the federal nature of the claim to a state court. Id. at

1 999. Petitioner, however, used that phrase only once in his
2 California Supreme Court habeas petition, describing his trial
3 counsel, and only in the section of the brief labeled "Statement of
4 Facts." (See Lodged Doc. 3a at 3.) He did not use the phrase
5 anywhere in the Argument section of the brief, nor did he anywhere
6 in that petition delineate his claims. As noted in the Report and
7 Recommendation, he also did not cite any federal cases or any
8 portion of the U.S. Constitution. Thus, it cannot be said that he
9 "fairly presented" the federal nature of any of the claims he now
10 raises, including the ineffective-assistance-of-trial-counsel
11 claim, to the California Supreme Court.

12 Even if Petitioner's single invocation of the phrase
13 "ineffective assistance of trial counsel" could be said to have
14 exhausted that claim, his Petition would be rendered a "mixed"
15 petition, containing exhausted and unexhausted claims, and would
16 therefore require dismissal under Rose v. Lundy, 455 U.S. 509, 522,
17 102 S. Ct. 1198, 1205, 71 L. Ed. 2d 179 (1982).

18 The Court therefore concurs with and accepts the Magistrate
19 Judge's recommendations that Respondent's Motion to Dismiss be
20 granted and Judgment be entered denying the Petition and dismissing
21 this action without prejudice for failure to exhaust state
22 remedies.

23 IT IS SO ORDERED.

24
25 DATED: 12/18/11

Spencer Letts

J. SPENCER LETTS
UNITED STATES DISTRICT JUDGE