

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

ROBERT L. ROBINSON,	)	
	)	
Petitioner,	)	
	)	
v.	)	1:22-cv-00310-GZS
	)	
	)	
STATE OF MAINE,	)	
	)	
Respondent	)	

**RECOMMENDED DECISION AFTER REVIEW OF HABEAS PETITION**

Petitioner seeks habeas relief pursuant to 28 U.S.C. § 2254. (Petition, ECF No. 1.)

Petitioner evidently seeks relief from a state court judgment entered following his conviction on charges of gross sexual assault, unlawful sexual contact, and unlawful sexual touching. (Petition ¶ 5.) According to Petitioner, the state court imposed a 20-year sentence. (Petition ¶ 3.)

Pursuant to Rule 4 of the Rules Governing Section 2254 Cases, upon the filing of a petition, the Court must conduct a preliminary review of the petition, and “must dismiss” the petition “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court.” After a review in accordance with Rule 4, I recommend the Court dismiss the matter unless during the fourteen-day period for objections to this recommended decision, Petitioner amends the petition to address the deficiencies identified herein.

## DISCUSSION

Pursuant to 28 U.S.C. § 2254(a), a person in custody pursuant to the judgment of a state court may apply to a federal district court for a writ of habeas corpus “only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” A petition may not be granted if the petitioner does not first exhaust available state court remedies. 28 U.S.C. § 2254(b), (c).<sup>1</sup> “Before seeking a federal writ of habeas corpus, a state prisoner must exhaust available state remedies, 28 U.S.C. § 2254(b)(1), thereby giving the State the ‘opportunity to pass upon and correct’ alleged violations of its prisoners’ federal rights.” *Baldwin v. Reese*, 541 U.S. 27, 29 (2004) (quoting *Duncan v. Henry*, 513 U.S. 364, 365 (1995) (per curiam)) (quotation marks omitted). In *Baldwin*, the

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<sup>1</sup> Title 28 U.S.C. § 2254(b) and (c) address exhaustion and state:

**(b)(1)** 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 unless it appears that—

**(A)** the applicant has exhausted the remedies available in the courts of the State;  
or

**(B) (i)** there is an absence of available State corrective process; or

**(ii)** circumstances exist that render such process ineffective to protect the rights of the applicant.

**(2)** An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

**(3)** A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

**(c)** An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

Court noted that “[t]o provide the State with the necessary ‘opportunity,’ the prisoner must ‘fairly present’ his claim in each appropriate state court (including a state supreme court with powers of discretionary review), thereby alerting that court to the federal nature of the claim.” *Id.* (quoting *Duncan*, 513 U.S. at 365–66).

Title 28 U.S.C. § 2254(d) provides in pertinent part:

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.

*See Hensley v. Roden*, 755 F.3d 724, 730–31 (1st Cir. 2014) (noting that the court looks to Supreme Court holdings in effect when the state court decision was rendered).

Here, Petitioner has made no substantive allegations in his petition. Petitioner, therefore, has not alleged a basis for habeas relief.<sup>2</sup> Accordingly, dismissal is warranted.

### CONCLUSION

Based on the foregoing analysis, an evidentiary hearing is not warranted under Rule 8 of the Rules Governing Section 2254 Cases. I recommend the Court dismiss Petitioner’s petition for habeas relief under 28 U.S.C. § 2254, unless within fourteen days from the date of this recommended decision, Petitioner amends the petition to assert a basis

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<sup>2</sup> Based on Petitioner’s filing, Petitioner also has apparently not exhausted the state court remedies. (Petition ¶ 10.)

or bases for habeas relief.<sup>3</sup> I also recommend the Court deny a certificate of appealability pursuant to Rule 11 of the Rules Governing Section 2254 Cases because there is no substantial showing of the denial of a constitutional right within the meaning of 28 U.S.C. § 2253(c)(2).

**NOTICE**

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within fourteen (14) days of being served with a copy thereof.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

/s/ John C. Nivison  
U.S. Magistrate Judge

Dated this 13th day of October, 2022.

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<sup>3</sup> If Petitioner files an amended petition, Petitioner must sign the petition. The current petition is unsigned.