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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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10 John Calvin Neuendorf, II,

No. CV 12-755-PHX-RCB (DKD)

11 Petitioner,

ORDER

12 vs.

13 Charles L. Ryan, et al.,

14 Respondents.

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17 Petitioner John Calvin Neuendorf, II, who is confined in the Arizona State Prison
18 Complex-Lewis, filed *pro se* Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus
19 by a Person in State Custody and an Application to Proceed *In Forma Pauperis*. On April
20 26, 2012, Petitioner filed a Motion for Leave to Amend and on May 4, 2012, Petitioner filed
21 a second Motion for Leave to Amend. In a June 29, 2012 Order, the Court granted the
22 Application to Proceed and granted Petitioner leave to file an amended petition. On July 27,
23 2012, Petitioner filed an Amended Petition (Doc. 16).

24 Petitioner has also filed a July 13, 2012 Motion to Appoint Counsel (Doc. 14), an
25 August 13, 2012 “Writ of Mandamus” (Doc. 19), and multiple letters. The Court will
26 dismiss the Amended Petition and this action for failure to exhaust state court remedies and
27 will deny the pending Motions as moot.

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1 **I. Amended Petition**

2 In his Amended Petition, Petitioner challenges his April 8, 2011 conviction in the
3 Superior Court in Maricopa County, case number CR 2009-167757-001DT, for aggravated
4 assault and attempted aggravated assault. Petitioner was sentenced to ten years'
5 imprisonment and four years' probation.

6 Petitioner raises four grounds for relief but affirmatively alleges that he has not
7 presented any of his claims to the Arizona Court of Appeals.

8 **II. Exhaustion**

9 Before a federal court may grant habeas relief, a prisoner must first have exhausted
10 remedies available in the state courts. See 28 U.S.C. § 2254(b)(1); O'Sullivan v. Boerckel,
11 526 U.S. 838, 842 (1999). The federal court will not entertain a petition for writ of habeas
12 corpus unless each and every issue has been exhausted. Rose v. Lundy, 455 U.S. 509, 521-
13 22 (1982); Olvera v. Guirbino, 371 F.3d 569, 572 (9th Cir. 2004) (district court may not
14 consider a claim until petitioner has properly exhausted all available remedies). When
15 seeking habeas relief, the burden is on the habeas petitioner to show that he has properly
16 exhausted each claim. Cartwright v. Cupp, 650 F.2d 1103, 1104 (9th Cir. 1981) (*per*
17 *curiam*).

18 To exhaust claims, a prisoner must give the state courts a "fair opportunity" to act on
19 his claims. Castillo v. McFadden, 370 F.3d 882 (9th Cir. 2004). He must describe both the
20 operative facts and the federal legal theory so that the state courts have a "fair opportunity"
21 to apply controlling legal principles to the facts bearing upon his constitutional claim." Kelly
22 v. Small, 315 F.3d 1063, 1066 (9th Cir. 2003). A prisoner seeking to exhaust claims in state
23 court before filing a federal habeas action should diligently pursue his available state
24 remedies to avoid application of the one-year limitation period. See Shelby v. Bartlett, 391
25 F.3d 1061, 1066 (9th Cir. 2004). In cases not carrying a life sentence or death penalty,
26 claims are exhausted once the Arizona Court of Appeals has ruled on them. See Swoopes
27 v. Sublett, 196 F.3d 1008, 1010 (9th Cir. 1999).

