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

Forrest Dunbar,)	No. CV 09-8056-PCT-SMM (MEA)
Petitioner,)	ORDER
vs.)	
Arizona Department of Corrections,)	
Respondent.)	

On March 30, 2009, Petitioner Forrest Dunbar filed a “Writ of Habeas Corpus” and paid the \$5.00 filing fee. In an April 2, 2009 Order, the Court dismissed the Petition because it was not filed on the court-approved form and gave Plaintiff 30 days to file an amended petition on the court-approved form.

On April 29, 2009, Plaintiff filed an Amended Petition under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody (Doc. #4). The Court will dismiss the Amended Petition for lack of jurisdiction and because the Amended Petition is premature.

I. Amended Petition

Petitioner was convicted in Yavapai County Superior Court, case #CR-2003-0489 and #CR-2003-1284, of forgery and leaving the scene of an accident. He was sentenced to consecutive 2.5-year terms of imprisonment. In his Amended Petition, Petitioner names

1 former Director of the Arizona Department of Corrections Dora Schriro as Respondent¹ and
2 the Arizona Attorney General as an Additional Respondent.

3 Petitioner raises one ground for relief—“[p]ursuant to title 41 1604.10(d) [of the
4 Arizona Revised Statutes] . . . Petitioner is being held on community supervision outside the
5 legal parameters within this title.” Plaintiff affirmatively states that he has not presented this
6 issue to the Arizona Court of Appeals, alleging that it is “a question of protected good time
7 credits post release.”

8 **II. Lack of Personal Jurisdiction**

9 Section 2254(a), 28 U.S.C., requires the Court to “entertain an application for a writ
10 of habeas corpus [o]n behalf of a person in custody pursuant to the judgment of a State court
11 **only on the ground that he is in custody in violation of the Constitution or laws or**
12 **treaties of the United States.”** 28 U.S.C. § 2254(a) (emphasis added.) Petitioner does not
13 allege that he is in custody in violation of the Constitution or the laws or treaties of the
14 United States, but rather he alleges a violation of state law. Thus, the Court lacks jurisdiction
15 over this case.

16 **III. Exhaustion of State Remedies**

17 Before the court may grant habeas relief to a state prisoner, the prisoner must exhaust
18 remedies available in the state courts. 28 U.S.C. § 2254(b)(1); O’Sullivan v. Boerckel, 526
19 U.S. 838, 842 (1999). The federal court will not entertain a petition for writ of habeas corpus
20 unless each and every issue has been exhausted. Rose v. Lundy, 455 U.S. 509, 522 (1982).
21 To exhaust a claim, a petitioner must describe both the operative facts and the federal legal
22 theory so that the state courts have a “fair opportunity” to apply controlling legal principles
23 to the facts bearing on his constitutional claim. Kelly v. Small, 315 F.3d 1063, 1066 (9th Cir.
24 2003). In cases not carrying a life sentence or death penalty, claims are exhausted once the
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27 ¹The Court takes judicial notice that Dora B. Schriro is no longer Director of the
28 Arizona Department of Corrections (ADOC). The Court will substitute the new Director of
the ADOC, Charles L. Ryan, as Respondent pursuant to Rule 25(d) of the Federal Rules of
Civil Procedure.

1 Arizona Court of Appeals has ruled on them. Swoopes v. Sublett, 196 F.3d 1008, 1010 (9th
2 Cir. 1999). The failure to exhaust subjects the Petitioner to dismissal. See Gutierrez v.
3 Griggs, 695 F.2d 1195, 1197 (9th Cir. 1983).

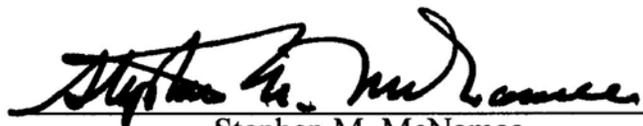
4 A state-court petition for post-conviction relief can be used if “[t]he person is being
5 held in custody after the sentence imposed has expired.” Ariz. R. Crim. P. 32.1(d).
6 Alternatively, if the sentence imposed has not expired, a state-court petition for special action
7 may be appropriate. See Crumrine v. Stewart, 24 P.3d 1281, 1282 (Ariz. App. 2001) (noting
8 that trial court had construed a state-court petition for habeas corpus regarding the
9 application of earned release credits as a petition for special action and stating that, in order
10 to obtain special action relief, the petitioner was required to show that the Director of the
11 Arizona Department of Corrections “failed to exercise his discretion, failed to perform a duty
12 as to which he had no discretion, or abused his discretion”). Thus, Petitioner’s Amended
13 Petition is premature, and the Court will dismiss it without prejudice.

14 **IT IS ORDERED:**

15 (1) Charles L. Ryan, Director of the ADOC, is **substituted as Respondent** for
16 Dora B. Schiro pursuant to Rule 25(d) of the Federal Rules of Civil Procedure. Further
17 proceedings in this action **must name** Charles L. Ryan as Respondent.

18 (2) Petitioner’s Amended Petition for Habeas Corpus (Doc. #4) and this case are
19 **dismissed without prejudice**. The Clerk of Court must close this case and issue judgment
20 accordingly.

21 DATED this 5th day of May, 2009.

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24 _____
25 Stephen M. McNamee
26 United States District Judge
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