

1 Petition, Petitioner names Tom Shehan as Respondent and the State of Arizona and Arizona
2 Attorney General as Additional Respondents.

3 Petitioner raises four grounds for relief in his Petition. He also alleges that he has
4 filed an appeal and/or petition for special action with the Arizona Court of Appeals, as well
5 as two petitions with the Mohave County Superior Court.

6 **II. Discussion**

7 First, it is not clear that relief is available pursuant to 28 U.S.C. § 2254, which
8 requires that a person be in custody pursuant to a **judgment** of a State court. Petitioner states
9 in his Petition that his sentence was not imposed until March 14, 2012, nine days *after* he
10 filed this Petition.¹

11 Second, before the court may grant habeas relief to a state prisoner, the prisoner must
12 exhaust remedies available in the state courts. 28 U.S.C. § 2254(b)(1); O’Sullivan v.
13 Boerckel, 526 U.S. 838, 842 (1999). “In other words, the state prisoner must give the state
14 courts an opportunity to act on his claims before he presents those claims to a federal court
15 in a habeas petition.” O’Sullivan, 526 U.S. at 842. The failure to exhaust subjects the
16 Petition to dismissal. See Gutierrez v. Griggs, 695 F.2d 1195, 1197 (9th Cir. 1983).

17 If a prisoner has post-conviction proceedings pending in state court, the federal
18 exhaustion requirement is not satisfied. See Sherwood v. Tomkins, 716 F.2d 632, 634 (9th
19 Cir. 1983) (pending appeal); Schnepp v. Oregon, 333 F.2d 288, 288 (9th Cir. 1964) (pending
20 post-conviction proceeding). The prisoner must await the outcome of the pending state-court
21 challenge before proceeding in federal court, “even where the issue to be challenged in the
22 writ of habeas corpus has been finally settled in the state courts.” Sherwood, 716 F.3d at
23 634. The pending state-court proceeding could affect the conviction or sentence and,
24 therefore, could ultimately affect or moot these proceedings. Id.

25
26
27 ¹In addition, attached to Petitioner’s March 21st Motion in Request are two pages from
28 a probation officer that indicate that Petitioner’s sentencing was set for March 14th and
Petitioner’s own statement that “sentencing was postponed two weeks - no date yet.”

1 In light of Petitioner’s pending appeal and/or special action, and his pending motions
2 in the superior court, the Petition is premature and must be dismissed. See id.; Schnepp. The
3 Court will dismiss the case without prejudice.

4 **III. Motion in Request**

5 In his Motion in Request, Petitioner appears to be asking this Court to contact the
6 Arizona Court of Appeals and “request, by–fax–or mail–this Rule -7- Spe[ci]al Action, so
7 [Petitioner] can fill it out, and send [it] back [to the] Appeal[is] Court.” Because the Court
8 is dismissing this habeas action, the Court will deny as moot the Motion in Request.

9 **IT IS ORDERED:**

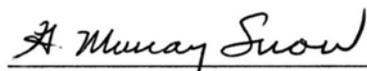
10 (1) Petitioner’s Petition for Habeas Corpus (Doc. 1) and this case are **dismissed**
11 **without prejudice.**

12 (2) Petitioner’s “Motion in Request, for Spe[ci]al Action Rule-7” (Doc. 4) is
13 **denied as moot.**

14 (3) The Clerk of Court must enter judgment accordingly and close this case.

15 (4) Pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases, in the event
16 Petitioner files an appeal, the Court declines to issue a certificate of appealability because
17 reasonable jurists would not find the Court’s procedural ruling debatable. See Slack v.
18 McDaniel, 529 U.S. 473, 484 (2000).

19 DATED this 3rd day of April, 2012.

20
21 
22 _____
23 G. Murray Snow
24 United States District Judge
25
26
27
28