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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

KEITH THOMAS  
Petitioner,  
v.  
MATTHEW CATE, Secretary of CDCR,  
Respondent.

No. CV 13-5514-RGK (PLA)  
**ORDER RE: SUMMARY DISMISSAL OF ACTION**

On July 31, 2013, Keith Thomas ("Thomas") filed a Petition for Writ of Habeas Corpus by a Person in State Custody (the "Petition") on behalf of three other state prisoners -- Ollie Wilkin, Kelvin Bookman, and Charles Baker. (Petition, at 1, 5). It appears that the Petition challenges the state murder convictions of Wilkin, Bookman, and Baker, but it plainly appears from the face of the Petition that Wilkin, Bookman, and Baker are not entitled to relief.

First, apart from stating that Wilkin, Bookman, and Baker are serving life sentences in prison pursuant to convictions for murder, the Petition fails to furnish any specific information concerning their convictions, including the court in which they were convicted (the Petition states "Los Angeles / San Diego" on the space provided to indicate the place of conviction and sentence), the trial court case number(s), and the dates of conviction and sentencing. (See Petition, at 2.) As such, the Petition fails to comply with Rule 8(a) of the Federal Rules of Civil

1 Procedure, which states that a pleading must contain “a short and plain statement of the grounds  
2 for the court’s jurisdiction, unless the court already has jurisdiction and the claim needs no new  
3 jurisdictional support.” Without specific information concerning where and when the convictions  
4 underlying the Petition took place, the Court cannot determine whether federal habeas jurisdiction  
5 is proper under 28 U.S.C. § 2254. See 28 U.S.C. § 2254(a) (empowering the Court to “entertain  
6 an application for a writ of habeas corpus in behalf of a person in custody pursuant to the  
7 judgment of a State court only on the ground that he is in custody in violation of the laws of the  
8 Constitution or laws or treaties of the United States”).

9 Second, the Petition indicates that no direct appeal was ever filed from any of the  
10 convictions of Wilkin, Bookman, and Baker, and that no state habeas petitions have been filed  
11 with respect to any of their convictions. (See Petition, at 2-3.) As a matter of comity, a federal  
12 court will not entertain a habeas corpus petition unless the petitioner has exhausted the available  
13 state judicial remedies on every ground presented in the petition. Rose v. Lundy, 455 U.S. 509,  
14 518-22, 102 S.Ct. 1198, 71 L.Ed.2d 379 (1982). The habeas statute explicitly provides that a  
15 habeas petition brought by a person in state custody “shall not be granted unless it appears that --  
16 (A) the applicant has exhausted the remedies available in the courts of the State; or (B)(i) there  
17 is an absence of available State corrective process; or (ii) circumstances exist that render such  
18 process ineffective to protect the rights of the applicant.” 28 U.S.C. § 2254(b)(1). Moreover, if  
19 the exhaustion requirement is to be waived, it must be waived expressly by the state, through  
20 counsel. See 28 U.S.C. § 2254(b)(3).

21 Exhaustion requires that petitioner’s contentions be fairly presented to the state supreme  
22 court even if that court’s review is discretionary. O’Sullivan v. Boerckel, 526 U.S. 838, 845-47,  
23 119 S.Ct. 1728, 144 L.Ed.2d 1 (1999); James v. Giles, 221 F.3d 1074, 1077 n.3 (9th Cir. 2000).  
24 A petitioner must give the state courts “one full opportunity to resolve any constitutional issues by  
25 invoking one complete round of the State’s established appellate review process” in order to  
26 exhaust his claims. O’Sullivan, 526 U.S. at 845. A claim has not been fairly presented unless the  
27 prisoner has described in the state court proceedings both the operative facts and the federal  
28 legal theory on which his claim is based. See Duncan v. Henry, 513 U.S. 364, 365-66, 115 S.Ct.

1 887, 130 L.Ed.2d 865 (1995); Johnson v. Zenon, 88 F.3d 828, 830 (9th Cir. 1996). A petitioner  
2 has the burden of demonstrating that he has exhausted available state remedies. See, e.g.,  
3 Brown v. Cuyler, 669 F.2d 155, 158 (3d Cir. 1982). Here, the Petition fails to demonstrate that  
4 Wilkin, Bookman, or Baker have exhausted available state remedies with respect to any potential  
5 habeas claims. (See Petition, at 2-3, 5-6.)

6 Finally, the space on the Petition for the petitioner(s) to sign, in order to certify under  
7 penalty of perjury that the information in the Petition is true and correct, is signed by Thomas, who  
8 asserts that he is “the next of friend in this matter[] involving Charles Baker[], Ollie Wilkin and  
9 Kevin Bookman.” (Petition, at 8; Affidavit in Support of the Petition, at 1). The Petition is not  
10 signed by either Wilkin, Bookman, or Baker.

11 A third party, or “next friend,” can appear in court on behalf of detained prisoners who are  
12 unable to seek relief themselves. Whitmore v. Arkansas, 495 U.S. 149, 161, 110 S.Ct. 1717, 109  
13 L.Ed.2d 135 (1990). A “next friend” does not himself become a party to the habeas corpus action  
14 in which he participates. He merely pursues the cause on behalf of the detained person, who  
15 remains the real party in interest. Id. at 163.

16 “[N]ext friend’ standing is by no means granted automatically to whomever seeks to pursue  
17 an action on behalf of another.” Id. In order for such standing to be granted, the following two  
18 requisites must be satisfied. First, the “next friend” must provide an adequate explanation, such  
19 as inaccessibility, mental incompetence, or other disability, why the real party in interest cannot  
20 appear on his own behalf to prosecute the action. See, e.g., United States ex rel. Toth v. Quarles,  
21 350 U.S. 11, 13 n.3, 76 S.Ct. 1, 100 L.Ed. 8 (1955) (habeas petition brought by sister on behalf  
22 of prisoner held in Korea); Massie ex rel. Kroll v. Woodford, 224 F.3d 1191, 1196 (9th Cir. 2001)  
23 (next friend must present “meaningful evidence” that petitioner is suffering from a mental disease,  
24 disorder, or defect that substantially affects his capacity to make an intelligent decision); Hamdi  
25 v. Rumsfeld, 294 F.3d 593 (4th Cir. 2002) (father of military detainee at a naval station brig  
26 granted next friend standing). Second, the “next friend” must have some significant relationship  
27 with, and be truly dedicated to the best interests of the petitioner. Massie, 244 F.3d at 1194 (citing  
28 Whitmore, 495 U.S. at 163). See also Toth, 350 U.S. at 13 n.3 (granting next friend standing to

1 sister on behalf of prisoner); Coalition of Clergy, Lawyers, and Professors v. Bush, 310 F.3d 1153,  
2 1161-62 (9th Cir. 2002), cert. denied, 538 U.S. 1031, 123 S.Ct. 2073, 155 L.Ed.2d 1060 (2003)  
3 (coalition lacks standing as next friend because it had not demonstrated any relations with the  
4 detainees on whose behalf the petition was brought). These limitations were placed so that the  
5 writ of habeas corpus should not be availed of, as a matter of course, by intruders or uninvited  
6 meddlers, styling themselves as next friends. Whitmore, 495 U.S. at 164. Where a habeas  
7 petition is brought by an individual who lacks standing to proceed as “next friend” of the petitioner,  
8 the Court lacks jurisdiction over the action. See id. at 166.

9 Here, Thomas states that Wilkin cannot appear on his own behalf to prosecute this action  
10 because he “has a [p]osttraumatic stress disorder.” (Affidavit in Support of the Petition, at 1). He  
11 further states that Wilkin, Bookman, and Baker are all “mental health inmate[s],” explaining that  
12 “[t]heir mental incompetence is their mental illness and disability, their silliness, ignorance and  
13 unlearn in law ... .” (Affidavit in Support of the Petition, at 1-2). These assertions do not constitute  
14 compelling reasons why Wilkin, Bookman, and Baker each cannot prosecute a federal habeas  
15 action on his own. Under the next friend analysis, the first requirement has most often been  
16 considered a question of mental capacity, usually in the context of an inmate’s capacity to bring  
17 his own petition. See, e.g., Dennis ex rel. Butko v. Budge, 378 F.3d 880, 889 (9th Cir. 2004) (third  
18 party argued petitioner is suffering from a mental disease that affected his capacity to make an  
19 intelligent decision); Massie, 244 F.3d at 1196 (argued petitioner was incompetent to waive further  
20 habeas proceedings). Thomas’ vague assertions of “mental illness and disability,” and even his  
21 representation that Wilkin has posttraumatic stress disorder, do not amount to “meaningful  
22 evidence” that Wilkin, Bookman, and Baker are each suffering from a mental disease, disorder,  
23 or defect that substantially affects his capacity to make intelligent decisions. See Massie, 224  
24 F.3d at 1196. Neither does “silliness” or the lack of a legal education meet the standard of  
25 showing that Wilkin, Bookman, and Baker are each unable to litigate his respective case due to  
26 mental incapacity, lack of access to court, or other similar disability. See Coalition, 310 F.3d at  
27 1160 (pre-requisite for next-friend standing not satisfied where real party’s access to court is  
28 otherwise unimpeded). Accordingly, even if Thomas’ relationship with and dedication to the best

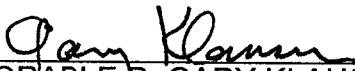
1 interests of Wilkin, Bookman, and Baker may be assumed,<sup>1</sup> Thomas does not have standing to  
2 proceed as "next friend" because he has not shown compelling reasons why each of these three  
3 men cannot prosecute a federal habeas action on his own. Because Thomas lacks standing to  
4 bring this action, dismissal of the Petition -- which has been brought by Thomas -- is appropriate  
5 for want of jurisdiction. See Whitmore, 495 U.S. at 166.

6 Based on the foregoing, **IT IS ORDERED THAT:**

7 1. The case is summarily **dismissed** for lack of exhaustion, want of jurisdiction due to  
8 Thomas' lack of standing, and failure to set forth a short and plain statement of the grounds for  
9 habeas jurisdiction. See Rule 4 of the Rule Governing Section 2254 Cases in the United States  
10 District Courts; Local Rule 72-3.2.

11 2. In the event Wilkin, Bookman, or Baker wish to *personally* file a habeas claim  
12 challenging the legality of a conviction and/or his confinement, the Clerk is **directed** to send  
13 Thomas three blank copies of the Central District's Petition for Writ of Habeas Corpus by a Person  
14 in State Custody. Any habeas petition personally filed by Wilkin, Bookman, or Baker must comply  
15 with the instructions provided on the Central District of California's habeas form and must contain  
16 **complete answers for all sections** on the form, including information concerning the conviction  
17 being challenged. Any petition must also be fully exhausted and personally signed by the  
18 petitioner under penalty of perjury.

19  
20 DATED: AUGUST 7, 2013

21   
22 HONORABLE R. GARY KLAUSNER  
23 UNITED STATE DISTRICT JUDGE  
24  
25

26 <sup>1</sup> The Petition contains absolutely no evidence that Wilkin, Bookman, and Baker even want  
27 Thomas to pursue this action on their behalf. Further, even if Thomas has the best interests of  
28 Wilkin, Bookman, and Baker in mind -- and the Court is skeptical that their purported relationship  
as former fellow gang members would meet the standard -- the deficiencies in the Petition raise  
a question as to whether Thomas is capable of *acting* in their best interests.