

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **WESTERN DIVISION**
11

12 JOHN D. MAYE,

13 Petitioner,

14 v.

15 E. VALENZUELA, Warden,

16 Respondent.
17

No. CV 14-2059-JLS (PLA)

**ORDER DISMISSING PETITION WITH
LEAVE TO AMEND**

18 John D. Maye (“petitioner”) initiated this action on March 18, 2014, by filing a Petition for
19 Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (“Petition”). The Petition indicates that
20 petitioner is currently incarcerated at the California Men’s Colony in San Luis Obispo, California.
21 For the reasons set forth below, the Petition is dismissed without prejudice and with leave to
22 amend.

23 As an initial matter, in filing his Petition, petitioner did not use the proper form, pursuant to
24 Local Rule 83-16.1, which requires that a petition for writ of habeas corpus “be submitted on the
25 forms approved and supplied by the Court.” Habeas forms are a procedural device which
26 significantly aid the Court in processing the numerous habeas petitions presented to the Court.
27 The habeas form used by the Central District of California is designed to aid petitioner to present
28 the relevant information regarding his habeas claim(s) in a “simple, concise, and direct” manner,

1 as required by Fed. R. Civ. P. 8(d). In failing to submit a habeas form approved by this Court,
2 petitioner failed to follow Local Rule 83-16.1, and thus the Petition contains multiple deficiencies,
3 discussed herein.

4 First, the Petition indicates that petitioner seeks to challenge his sentence, including the
5 calculation of “pre- prison sentence credits,” as well as his receipt of “good time work time” credits.
6 (Petition at 2-3). It does not provide any additional information about petitioner’s conviction,
7 including the offenses for which he was convicted. (Petition at 2).¹ Thus, the Petition fails to
8 furnish critical information underlying petitioner’s claims.

9 Second, because petitioner did not use the proper form, it is not clear from the Petition
10 exactly what, or how many, grounds for relief petitioner presents. (See generally, Petition at 1-5).
11 Moreover, although petitioner generally asserts that the claims “presented within have been
12 properly presented to the State California Supreme Court,” and that the Supreme Court denied
13 the claims on January 29, 2014, it is not clear from the instant Petition what specific claims were
14 brought in that proceeding. (See Petition at 1). As a matter of comity, a federal court will not
15 entertain a habeas corpus petition unless the petitioner has exhausted the available state judicial
16 remedies on every ground presented in the petition. Rose v. Lundy, 455 U.S. 509, 518-22, 102
17 S.Ct. 1198, 71 L.Ed.2d 379 (1982). The habeas statute explicitly provides that a habeas petition
18 brought by a person in state custody “shall not be granted unless it appears that -- (A) the
19 applicant has exhausted the remedies available in the courts of the State; or (B)(i) there is an
20 absence of available State corrective process; or (ii) circumstances exist that render such process
21 ineffective to protect the rights of the applicant.” 28 U.S.C. § 2254(b)(1). Moreover, if the
22 exhaustion requirement is to be waived, it must be waived expressly by the state, through counsel.
23 See 28 U.S.C. § 2254(b)(3).

24 Exhaustion requires that petitioner’s contentions be fairly presented to the state supreme
25 court even if that court’s review is discretionary. O’Sullivan v. Boerckel, 526 U.S. 838, 845-47, 119

27 ¹ Petitioner does assert that the “claims presented within have been properly presented to
28 the State of California Supreme Court [Case Number: S215434],” and that those claims were
denied on January 29, 2014. (Petition at 1).

1 S.Ct. 1728, 144 L.Ed.2d 1 (1999); James v. Giles, 221 F.3d 1074, 1077 n.3 (9th Cir. 2000).
2 Petitioner must give the state courts “one full opportunity to resolve any constitutional issues by
3 invoking one complete round of the State’s established appellate review process” in order to
4 exhaust his claims. O’Sullivan, 526 U.S. at 845. A claim has not been fairly presented unless the
5 prisoner has described in the state court proceedings both the operative facts and the federal legal
6 theory on which his claim is based. See Duncan v. Henry, 513 U.S. 364, 365-66, 115 S.Ct. 887,
7 130 L.Ed.2d 865 (1995); Picard v. Connor, 404 U.S. 270, 275-78, 92 S.Ct. 509, 30 L.Ed.2d 438
8 (1971); Johnson v. Zenon, 88 F.3d 828, 830 (9th Cir. 1996); Bland v. California Dep’t of
9 Corrections, 20 F.3d 1469, 1473 (9th Cir. 1994), overruled on other grounds by Schell v. Witek,
10 218 F.3d 1017 (9th Cir. 2000). Petitioner has the burden of demonstrating that he has exhausted
11 available state remedies. See, e.g., Brown v. Cuyler, 669 F.2d 155, 158 (3d Cir. 1982). Here,
12 because petitioner fails to specify exactly what grounds were raised in his state petition, petitioner
13 has failed to demonstrate that any of his claims are exhausted.

14 Third, the Court observes that petitioner did not properly complete his Petition because he
15 failed to provide a signed statement certifying under penalty of perjury that the information in the
16 Petition is true and correct. (See Petition at 5). 28 U.S.C. § 2242 requires that a petition for writ
17 of habeas corpus be “signed and verified by the person for whose relief it is intended or by
18 someone acting in his behalf.” Petitioner’s failure to sign the Petition, by itself, warrants dismissal.
19 See Hendricks v. Vasquez, 908 F.2d 490, 491 (9th Cir. 1990) (“The district court may refuse to
20 file, or may dismiss, an unsigned and unverified petition.”) (citing In re Application of Gibson, 218
21 F.2d 320 (9th Cir. 1954) (affirming the district court’s refusal to file an unverified petition)).

22 Based on these deficiencies, amendment is appropriate. Accordingly, IT IS ORDERED that
23 the Petition is dismissed with leave to amend. **Petitioner shall, no later than April 11, 2014, file**
24 **an Amended Petition. The Amended Petition should clearly contain the words “AMENDED**
25 **PETITION.”** The Amended Petition should also provide a signature and signature date where
26 indicated in the Amended Petition.

1 Petitioner is advised that if an Amended Petition, using the proper form, is not received **by**
2 **April 11, 2014**, dismissal of the instant Petition will be recommended for failure to prosecute and
3 failure to comply with this Order and governing case law.

4 The Court Clerk is directed to send petitioner a copy of a blank Petition for Writ of Habeas
5 Corpus by a Person in State Custody, and a blank Declaration in Support of Request to Proceed
6 In Forma Pauperis, along with this Order.

7 

8 DATED: March 21, 2014

9

10 PAUL L. ABRAMS
11 UNITED STATES MAGISTRATE JUDGE
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28