

1 Ed. 2d 513 (2004); see also 28 U.S.C. § 2242; Rule 2(a) of the Rules
2 Governing Section 2254 Cases in the United States District Courts and
3 the Advisory Committee Notes thereto; Hogan v. Hanks, 97 F.3d 189,
4 190 (7th Cir. 1996), cert. denied, 520 U.S. 1171 (1997).

5 2. The Petition has not been submitted on either the national
6 form appended to the Habeas Rules or the form currently approved and
7 supplied by the Central District of California for habeas petitions
8 brought by prisoners in state custody. See Rule 2(d) of the Rules
9 Governing Section 2254 Cases in the United States District Courts
10 (authorizing the District Court by Local Rule to require that habeas
11 petitions be filed in a form prescribed by the Local Rule); see also
12 Central District of California Local Rule 83-16.1. Instead, the Petition
13 was improperly submitted on a habeas form that has not been in effect
14 for several years.

15 3. Petitioner checked off the “No” box in response to the
16 question asking whether, other than a direct appeal, he previously had
17 filed any petitions, applications or motions with respect to his conviction
18 in any court, state or federal. However, petitioner attached to the
19 Petition a copy of a California Supreme Court order denying a habeas
20 petition he had filed. Moreover, it appears from the California Appellate
21 Courts website that petitioner filed three habeas petitions in the
22 California Court of Appeal relating to his conviction and/or sentence in
23 Los Angeles County Superior Court Case No. BA398731. Thus, it is
24 clear that the Petition has not been properly or completely filled out by
25 petitioner.

26 4. Under 28 U.S.C. § 2254(a), petitioner may only seek habeas
27 relief from a state court conviction or sentence if he is contending that
28 he is in custody in violation of the Constitution or laws or treaties of the

1 United States. See Estelle v. McGuire, 502 U.S. 62, 67-68, 112 S. Ct.
2 475, 116 L. Ed. 2d 385 (1991) (“In conducting habeas review, a federal
3 court is limited to deciding whether a conviction violated the
4 Constitution, laws, or treaties of the United States.”); Smith v. Phillips,
5 455 U.S. 209, 221, 102 S. Ct. 940, 71 L. Ed. 2d 78 (1982) (“A federally
6 issued writ of habeas corpus, of course, reaches only convictions
7 obtained in violation of some provision of the United States
8 Constitution.”). Here, Grounds one, three, and four are not framed as
9 federal constitutional claims. Moreover, to the extent petitioner appears
10 to be claiming that his sentence was imposed in violation of California
11 law, such claim is not cognizable on federal habeas review because it
12 involves solely the interpretation and/or application of state sentencing
13 law. See, e.g., Christian v. Rhode, 41 F.3d 461, 469 (9th Cir. 1994);
14 Cacoperdo v. Demosthenes, 37 F.3d 504, 507 (9th Cir.), cert. denied,
15 514 U.S. 1026 (1995); Hendricks v. Zenon, 993 F.2d 664, 674 (9th Cir.
16 1993); Watts v. Bonneville, 879 F.2d 685, 687 (9th Cir. 1989); Miller
17 v. Vasquez, 868 F.2d 1116, 1118-19 (9th Cir. 1989). Finally, although
18 petitioner appears to be contending in his accompanying memorandum
19 of points and authorities that he received ineffective assistance of both
20 trial counsel and appellate counsel, he did not separately allege any
21 ineffective assistance of counsel claims in the grounds for relief section
22 of the Petition.

23 5. Under 28 U.S.C. § 2254(b), habeas relief may not be
24 granted unless petitioner has exhausted the remedies available in the
25 courts of the State.¹ Exhaustion requires that the prisoner’s contentions

27 ¹ The habeas statute now explicitly provides that a habeas petition brought
28 (continued...)

1 be fairly presented to the state courts, and be disposed of on the merits
2 by the highest court of the state. See James v. Borg, 24 F.3d 20, 24 (9th
3 Cir.), cert. denied, 513 U.S. 935 (1994); Carothers v. Rhay, 594 F.2d
4 225, 228 (9th Cir. 1979). Moreover, a claim has not been fairly
5 presented unless the prisoner has described in the state court
6 proceedings both the operative facts and the federal legal theory on
7 which his claim is based. See Duncan v. Henry, 513 U.S. 364, 365-66,
8 115 S. Ct. 887, 130 L. Ed. 2d 865 (1995); Picard v. Connor, 404 U.S.
9 270, 275-78, 92 S. Ct. 509, 30 L. Ed. 2d 438 (1971); Davis v. Silva, 511
10 F.3d 1005, 1009 (9th Cir. 2008). As a matter of comity, a federal court
11 will not entertain a habeas corpus petition unless the petitioner has
12 exhausted the available state judicial remedies on every ground
13 presented in the petition. Rose v. Lundy, 455 U.S. 509, 518-22, 102 S.
14 Ct. 1198, 71 L. Ed. 2d 179 (1982). Petitioner has the burden of
15 demonstrating that he has exhausted available state remedies. See, e.g.,
16 Brown v. Cuyler, 669 F.2d 155, 158 (3d Cir. 1982). Here, petitioner has
17 not met this burden because he did not list any California Supreme
18 Court filings in ¶ 7 of the Petition or attach to the Petition a copy of his
19 California Supreme Court habeas petition.

20 6. Petitioner failed to sign and date the Petition on page 7.
21 Thus, the Petition is not properly verified, as required by 28 U.S.C. §
22 2242, Rule 2(c) of the Rules Governing Section 2254 Cases in the

24 ¹(...continued)

25 by a person in state custody “shall not be granted unless it appears that-- (A) the
26 applicant has exhausted the remedies available in the courts of the State; or (B)(i)
27 there is an absence of available State corrective process; or (ii) circumstances exist
28 that render such process ineffective to protect the rights of the applicant.” 28 U.S.C.
§ 2254(b)(1).

1 United States District Courts. See also Central District of California
2 Local Rule 83-16.2.

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4 For the foregoing reasons, the Petition is dismissed with leave to amend. If
5 petitioner still desires to pursue this action, he is ORDERED to file an amended
6 petition rectifying the deficiencies discussed above on or before **March 23, 2015**.
7 The clerk is directed to send petitioner a blank Central District habeas petition form
8 for this purpose.

9 The amended petition should reflect the same case number, be clearly labeled
10 “First Amended Petition,” and be filled out completely. In ¶ 8 of the First Amended
11 Petition, petitioner should specify **separately and concisely** each federal
12 constitutional claim that he seeks to raise herein and answer all of the questions
13 pertaining to each such claim. (If petitioner attaches a supporting memorandum of
14 points and authorities, the arguments therein should correspond to the claims listed
15 in ¶ 8 of the habeas petition form and not include any additional claims.) If petitioner
16 contends that he exhausted his state remedies in a Petition for Review to the
17 California Supreme Court, he should list such filing in ¶ 4 of the habeas petition form
18 and provide all of the other called for information. If petitioner contends that he
19 exhausted his state remedies in a habeas petition to the California Supreme Court, he
20 should list such filing in ¶ 6 of the habeas petition form and provide all of the other
21 called for information. For each filing listed in ¶¶ 4 and 6, petitioner should be sure
22 to specify all of the grounds raised by him in such filing, along with the case number,
23 the date of decision, and the result.

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1 Finally, petitioner is cautioned that his failure to timely file a First Amended
2 Petition in compliance with this Order will result in a recommendation that this action
3 be dismissed without prejudice for failure to prosecute.
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5 DATED: February 13, 2015
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8 ROBERT N. BLOCK
9 UNITED STATES MAGISTRATE JUDGE
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