

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

OSCAR VILLANUEVA,

Petitioner,

v.

C. PFEIFFER, WARDEN,

Respondent.

No. CV 16-492 SJO (FFM)

ORDER RE SUMMARY
DISMISSAL OF ACTION WITHOUT
PREJUDICE

On January 22, 2016, Petitioner Oscar Villanueva (“Petitioner”) filed a Petition for Writ of Habeas Corpus by a Person in State Custody (“Petition”), pursuant to 28 U.S.C. § 2254. The Petition alleges various constitutional violations in connection with Petitioner’s prison disciplinary hearing that occurred on April 28, 2013. (Petition at 4).¹

“Before a federal court may grant habeas relief to a state prisoner, the prisoner must exhaust his remedies in state court.” *O’Sullivan v. Boerckel*, 526 U.S. 838, 842 (1999); *accord Rose v. Lundy*, 455 U.S. 509, 518-22, 102 S. Ct. 1198, 71 L. Ed. 2d 379 (1982). The habeas statute explicitly provides that a habeas petition brought by a person in state custody “shall not be granted unless it

¹ All citations to filings in this case refer to the pagination provided by the Court’s electronic docket.

1 appears that -- (A) the applicant has exhausted the remedies available in the courts
2 of the State; or (B)(i) there is an absence of available State corrective process; or
3 (ii) circumstances exist that render such process ineffective
4 to protect the rights of the applicant.” 28 U.S.C. § 2254(b)(1). Moreover, if the
5 exhaustion requirement is to be waived, it must be waived expressly by the State,
6 through counsel. *See* 28 U.S.C. § 2254(b)(3).

7 Exhaustion requires that the prisoner’s contentions be fairly presented to the
8 state courts, and be disposed of on the merits by the highest court of the state.
9 *Carothers v. Rhay*, 594 F.2d 225, 228 (9th Cir. 1979). A claim has not been fairly
10 presented unless the prisoner has described in the state court proceedings both the
11 operative facts and the federal legal theory on which his claim is based. *See*
12 *Duncan v. Henry*, 513 U.S. 364, 365-66, 115 S. Ct. 887, 130 L. Ed. 2d 865
13 (1995); *Picard v. Connor*, 404 U.S. 270, 275-78, 92 S. Ct. 509, 30 L. Ed. 2d 438
14 (1971); *Johnson v. Zenon*, 88 F.3d 828, 830 (9th Cir. 1996). A federal court may
15 raise the failure to exhaust issues *sua sponte* and may summarily dismiss on that
16 ground. *See Stone v. San Francisco*, 968 F.2d 850, 856 (9th Cir. 1992)(citations
17 omitted); *Cartwright v. Cupp*, 650 F.2d 1103, 1104 (9th Cir. 1981) (*per curiam*);
18 *see also Granberry v. Greer*, 481 U.S. 129, 134-35, 107 S. Ct. 1671, 95 L. Ed. 2d
19 119 (1987).

20 Petitioner has the burden of demonstrating that he has exhausted available
21 state remedies. *See, e.g., Brown v. Cuyler*, 669 F.2d 155, 158 (3rd Cir. 1982).
22 Here, it plainly appears from the face of the Petition that Petitioner cannot meet
23 this burden with respect to his claims. The Petition does not include any
24 documents suggesting that Petitioner has exhausted the claims presently raised
25 before this Court.² Additionally, a review of California Supreme Court records
26

27 ² The Court notes that Petitioner has attached to the Petition two state court
28 decisions, one from the Kern County Superior Court and the other from the Fifth
Appellate District of the California Court of Appeal. (Petition at 13–15). However,

1 reveals that Petitioner has never filed a habeas petition with the California
2 Supreme Court. *See* <http://appellatecases.courtinfo.ca.gov> (last visited February
3 4, 2016).

4 Because Petitioner has not raised his present claims in the California
5 Supreme Court, the Petition is unexhausted.

6 If it were clear that Petitioner is raising federal claims and that the
7 California Supreme Court would hold that Petitioner’s unexhausted federal claims
8 are procedurally barred under state law, then the exhaustion requirement would be
9 satisfied. In that event, although the exhaustion impediment to consideration of
10 Petitioner’s claims on the merits would be removed, federal habeas review of the
11 claim would remain barred unless petitioner could demonstrate “cause” for the
12 default and “actual prejudice” as a result of the alleged violation of federal law, or
13 demonstrate that failure to consider the claims would result in a “fundamental
14 miscarriage of justice.” *See Coleman v. Thompson*, 501 U.S. 722, 750, 111 S. Ct.
15 2546, 115 L. Ed. 2d 640 (1991). Here, it is neither “clear” that Petitioner is
16 raising a federal claim nor that the California Supreme Court would hold that
17 Petitioner’s federal claim is procedurally barred under state law. *See, e.g., People*
18 *v. Sorensen*, 111 Cal. App. 2d 404, 405 (1952) (noting that claims that
19 fundamental constitutional rights have been violated may be raised by state habeas
20 petition).

21 The Court therefore concludes that this is not an appropriate case for
22 invocation of either exception to the exhaustion requirement regarding the
23 existence of an effective state corrective process.

24 Therefore, the Petition is subject to dismissal.

25 ///

26 ///

27 _____
28 these state opinions do not discuss the claims raised in the instant Petition. In any
event, the claims discussed in the state court decisions are also unexhausted.

1 IT IS THEREFORE ORDERED that this action be summarily dismissed
2 without prejudice, pursuant to Rule 4 of the Rules Governing Section 2254 Cases
3 in the United States District Courts.

4 LET JUDGEMENT BE ENTERED ACCORDINGLY.

5
6 Dated: February 12, 2016.



7 S. JAMES OTERO
8 United States District Judge

9 Presented by:

10
11 /S/ FREDERICK F. MUMM
12 FREDERICK F. MUMM
13 United States Magistrate Judge
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28