

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES – GENERAL

Case No. 2:17-cv-05022-PSG (KES)

Date: July 19, 2017

Title: CHRISTIAN SANGURIMA v. W. L. MONTGOMERY, Warden

PRESENT:

THE HONORABLE KAREN E. SCOTT, U.S. MAGISTRATE JUDGE

Jazmin Dorado
Courtroom Clerk

Not Present
Court Reporter

ATTORNEYS PRESENT FOR
PLAINTIFF:
None Present

ATTORNEYS PRESENT FOR
DEFENDANT:
None Present

PROCEEDINGS (IN CHAMBERS):

**Order to Show Cause why Petition should
not be dismissed as unexhausted**

On June 29, 2017, Christian Sangurima (“Petitioner”) constructively filed a “Petition for Writ of Habeas Corpus by a Person in State Custody,” pursuant to 28 U.S.C. § 2254. (Dkt. 1 [“Petition”].) Petitioner challenges his state court conviction for carjacking with gang enhancements (Id. at 2.)

The Petition raises the following three grounds for relief:

- (1) Petitioner was deprived of his “right to personally address the court with respect to legal cause prior to pronouncement of judgment.”
- (2) “Denial of Marsden Motion”
- (3) “The trial court denied Petitioner’s constitutional right to self-representation.”

(Dkt. 1 at 5.)

A. Applicable Law.

All claims in a federal habeas petition must be exhausted before a federal court may grant the petition; if all or some of the claims have not been exhausted, then the petition is subject to dismissal. Rose v. Lundy, 455 U.S. 509, 522 (1982). Exhaustion requires that petitioner’s claims be fairly presented to the highest court in a state system even if that court’s review is

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discretionary and even where the claims depend on federal law. O’Sullivan v. Boerckel, 526 U.S. 838, 845-47 (1999); James v. Giles, 221 F.3d 1074, 1077 n.3 (9th Cir. 2000). To satisfy the exhaustion requirement, a habeas petitioner must fairly present his or her federal claims in the state courts in order to give the State the opportunity to pass upon and correct alleged violations of the prisoner’s federal rights. Duncan v. Henry, 513 U.S. 364, 365 (1995) (per curiam) (holding due process claim not exhausted where state petition asserted only erroneous evidentiary ruling). Typically, exhaustion is accomplished by raising a claim either on direct appeal or by filing a petition for writ of habeas corpus in state court. In California, a federal claim is “fairly presented” for purposes of exhaustion “if the petitioner has described the operative facts and legal theory upon which his claim is based” in a filing presented to the California Supreme Court. Tamapua v. Shimoda, 796 F.2d 261, 262 (9th Cir. 1986).

B. Analysis.

Petitioner attached his Petition for Review to the California Supreme Court. (Dkt. 1 at 10-24.) The Petition for Review only raises the claim presented as Ground One in the instant Petition. (Id.) However, the Petition for Review argues that the trial court erred only *as a matter of state law* when it denied Petitioner’s right to personally address the court with respect to legal cause prior to sentencing. (See id. at 17-23.) The Petition for Review does not articulate a federal legal theory for the argument in Ground One, and therefore appears unexhausted as a federal claim.

Grounds Two and Three also appear to be unexhausted. Petitioner’s appellate attorney brought those claims before the California Court of Appeal, but chose not to raise them in the Petition for Review. See People v. Sangurima, 2016 WL 1615639 (Cal. Ct. App. Apr. 20, 2016) (unpublished) (denying Petitioner’s Marsden and self-representation claims). Petitioner indicates that he has not filed any state habeas petitions that raised any of the Grounds in the instant Petition. (See Dkt. 1 at 3-5.)

On or before **August 21, 2017**, Petitioner is ordered to show cause why the Petition should not be dismissed as unexhausted. In response to this Order to Show Cause, Petitioner should do **one** of the following:

- (1) Explain when/how Petitioner believes his claims were exhausted in state court; or
- (2) File a motion to stay this action to permit him to return to state court to exhaust his Petition. A stay may be available under Rhines v. Weber, 544 U.S. 269 (2005) if Petitioner can show “good cause” for his failure to exhaust his claims earlier.

Nothing in this order prevents Petitioner from immediately filing a petition to the appropriate state court raising his unexhausted claims.

Initials of Deputy Clerk JD