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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION

AMBER ROBLES,	)	Case No. EDCV 12-00195-GAF (MLG)
	)	
Petitioner,	)	ORDER TO SHOW CAUSE WHY PETITION
	)	SHOULD NOT BE DISMISSED WITHOUT
v.	)	PREJUDICE FOR FAILURE TO EXHAUST
	)	STATE REMEDIES
WALTER MILLER, Warden,	)	
	)	
Respondent.	)	
	)	

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**I. Facts and Procedural History**

This petition for writ of habeas corpus was filed on February 7, 2012 pursuant to 28 U.S.C. § 2254. Petitioner Amber Robles claims that her trial counsel was ineffective in allowing her to plead guilty while under the influence of psychotropic medications and in failing to investigate Petitioner’s competency. (Pet. at 6.)

The facts show that on December 14, 2009, Petitioner plead guilty in the Riverside County Superior Court to torture (Cal. Penal Code § 206), forcible sexual penetration (Cal. Penal Code § 289(a)(1)), assault with a deadly weapon (Cal. Penal Code § 245(a)(1)), robbery (Cal. Penal Code § 211), residential burglary

1 (Cal. Penal Code § 459), and kidnaping (Cal. Penal Code § 207). On  
2 February 5, 2010, Petitioner was sentenced to a term of fifteen years  
3 to life. (Reporter's Transcript ("RT") at 3391.) Petitioner did not  
4 file a direct appeal to the California Court of Appeal.

5 Petitioner filed a petition for writ of habeas corpus in the  
6 Riverside County Superior Court on July 29, 2010, claiming  
7 ineffective assistance of counsel because her attorney "made me  
8 believe that takeing [sic] a plea was the only choice I had."  
9 (Lodgment 4.) On June 27, 2011, the petition was denied for failure  
10 to state a prima facie basis for relief, as the factual conclusions  
11 contained in the petition were not supported by specific details and  
12 were unsupported by the record. (Lodgment 5.)

13 Petitioner next filed a habeas corpus petition in the California  
14 Court of Appeal on July 15, 2011. She again claimed ineffective  
15 assistance because counsel caused Petitioner to think that she had  
16 to agree to the plea, and also because at the time of the plea,  
17 Petitioner was taking psychotropic medication and did not understand  
18 the consequences of signing the plea. (Lodgment 6). On August 30,  
19 2011, the petition was denied because Petitioner had not provided the  
20 lower court record or other documentation in support of her claims.  
21 (Lodgment 8.)

22 On December 9, 2011, Petitioner apparently filed an application  
23 for review in the California Supreme Court. However, on December 14,  
24 2011, the application was returned to Petitioner without being filed  
25 because it was untimely and the Court had lost jurisdiction to hear  
26 such an application pursuant to Cal. Rules of Court 8.500(e).  
27 (Lodgment 9.)

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1 **II. Analysis**

2 On April 20, 2012, Respondent filed an answer addressing the  
3 merits of the claims contained in the petition. Notwithstanding, the  
4 Court has determined that the claims in the petition have never been  
5 considered by the California Supreme Court.

6 The Antiterrorism and Effective Death Penalty Act of 1996  
7 ("AEDPA") provides that a state prisoner's petition for writ of  
8 habeas corpus shall not be granted unless it appears that the  
9 prisoner has exhausted available state remedies as to all of the  
10 claims in the petition. 28 U.S.C. § 2254(b)-(c); see also *Rose v.*  
11 *Lundy*, 455 U.S. 509, 518 (1982); *Hayes v. Kincheloe*, 784 F.2d 1434,  
12 1437 (9th Cir. 1986) (citing *Carothers v. Rhay*, 594 F.2d 225, 228  
13 (9th Cir. 1979)). "For reasons of federalism, 28 U.S.C. § 2254  
14 requires federal courts to give the states an initial opportunity to  
15 correct alleged violations of its prisoners' federal rights."  
16 *Kellotat v. Cupp*, 719 F.2d 1027, 1029 (9th Cir. 1983); see also  
17 *Reynoso v. Giurbino*, 462 F.3d 1099, 1109 (9th Cir. 2006). Each  
18 federal constitutional claim must be presented to the state supreme  
19 court even if that court's review is discretionary. *O'Sullivan v.*  
20 *Boerckel*, 526 U.S. 838, 847 (1999); *Insyxiengmay v. Morgan*, 403 F.3d  
21 657, 667-68 (9th Cir. 2005). Such a requirement affords state courts  
22 an opportunity to consider and correct any violation of federal law,  
23 thus demonstrating respect for our dual judicial system while also  
24 providing a complete record of a petitioner's federal claim as  
25 litigated in the state system. *Rose*, 455 U.S. at 518-19.

26 The exhaustion doctrine requires a petitioner to provide the  
27 state courts with one full opportunity to rule on her federal habeas  
28 claims before presenting those claims to the federal courts.

1 *O'Sullivan*, 526 U.S. at 844-45; *Insyxiengmay*, 403 F.3d at 667. A  
2 petitioner must alert the state courts to the fact that she is  
3 asserting a federal claim in order to fairly and fully present the  
4 legal basis of the claim. *Duncan v. Henry*, 513 U.S. 364, 365-66  
5 (1995); *Reynoso*, 462 F.3d at 1109; *Insyxiengmay*, 403 F.3d at 668.  
6 The petitioner must make the federal basis of the claim explicit  
7 either by specifying particular provisions of the federal  
8 constitution or statutes, or by citing to federal case law.  
9 *Insyxiengmay*, 403 F.3d at 668.

10 Where none of a petitioner's claims has been presented to the  
11 highest state court as required by the exhaustion doctrine, the Court  
12 must dismiss the petition. *Raspberry v. Garcia*, 448 F.3d 1150, 1154  
13 (9th Cir.2006); *Jiminez v. Rice*, 276 F.3d 478, 481 (9th Cir. 2001).  
14 While the Court may hold a mixed petition containing both exhausted  
15 and unexhausted claims in abeyance pending exhaustion of the  
16 unexhausted claims, this authority has not been extended to petitions  
17 that contain no exhausted claims. *Raspberry*, 448 F.3d at 1154.

18 Here, Petitioner has not exhausted either of her claims for  
19 relief in the instant petition in the California Supreme Court, by  
20 way of direct review or a petition for post-conviction relief.  
21 Petitioner raised her claim that counsel was ineffective in allowing  
22 her to plead guilty while under medication in the California Court  
23 of Appeal. (Lodgment 6.) While she attempted to appeal the court of  
24 appeal's denial of this claim to the California Supreme Court, that  
25 appeal was untimely and the supreme court never assumed jurisdiction  
26 over the case. Instead, the clerk of the court returned Petitioner's  
27 documents to her unfiled. (Lodgment 9.) Therefore, Petitioner's claim  
28 that counsel was ineffective in allowing her to plead guilty under

1 medication was never presented to the California Supreme Court and  
2 is unexhausted.

3 Petitioner's second claim, that counsel was ineffective due to  
4 his failure to investigate Petitioner's competency, was not presented  
5 in any of Petitioner's state habeas corpus petitions. Thus, this  
6 claim would be unexhausted even if Petitioner's application for  
7 review to the California Supreme Court had been timely.

8

9 **III. Order**

10 Because it appears that Petitioner did not present either of the  
11 claims presented in this petition to the California Supreme Court,  
12 the petition is subject to dismissal. However, Petitioner will be  
13 given the opportunity to address this issue. Accordingly, it is  
14 ORDERED that Petitioner show cause, on or before May 24, 2012, why  
15 this petition should not be dismissed without prejudice for failure  
16 to exhaust state remedies.

17 If Petitioner does not file a timely response to this order, the  
18 current petition will be subject to dismissal without prejudice and  
19 without further notice.

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21 Dated: May 3, 2012

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Marc L. Goldman  
United States Magistrate Judge

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