

1 federal rights.” Kellotat v. Cupp, 719 F.2d 1027, 1029 (9th Cir. 1983) (citation
2 omitted). A federal court may raise exhaustion problems *sua sponte*. See Stone v.
3 San Francisco, 968 F.2d 850, 856 (9th Cir. 1992), cert. denied, 506 U.S. 1081
4 (1993) (citing Granberry v. Greer, 481 U.S. 129, 134 (1987)).

5 Exhaustion requires that the prisoner’s contentions be fairly presented to the
6 highest court of the state. James v. Borg, 24 F.3d 20, 24 (9th Cir.), cert. denied,
7 513 U.S. 935 (1994). A claim has not been fairly presented unless the prisoner has
8 described in the state court proceedings both the operative facts and the federal
9 legal theory on which his claim is based. See Duncan v. Henry, 513 U.S. 364,
10 365-66 (1995); Anderson v. Harless, 459 U.S. 4, 6 (1982); Weaver v. Thompson,
11 197 F.3d 359, 364 (9th Cir. 1999).

12 Petitioner has the burden of demonstrating he has exhausted available state
13 remedies. See, e.g., Matthews v. Evatt, 105 F.3d 907, 911 (4th Cir. 1997), cert.
14 denied, 522 U.S. 833 (1997); Keating v. Hood, 922 F. Supp. 1482, 1490 (C.D.
15 Cal. 1996), app. dismissed on other grounds, 133 F.3d 1240 (9th Cir. 1998). Once
16 a court determines that a habeas petition contains only unexhausted claims, it may
17 dismiss the petition for failure to exhaust. Rasberry v. Garcia, 448 F.3d 1150,
18 1154 (9th Cir. 2006).

19 Here, as noted above, petitioner challenges a 2013 conviction in San
20 Bernardino County Superior Court. The Petition reflects that petitioner did not file
21 a petition for review in the California Supreme Court. (Petition at 3). The Petition
22 also reflects that petitioner filed a single habeas petition and that such petition was
23 filed in the San Bernardino County Superior Court. (Petition at 3-4).
24 Consistently, the dockets of the California Supreme Court available via
25 <http://appellatecases.courtinfo.ca.gov>, do not reflect that petitioner has ever sought
26 relief from such court. Nonetheless, in stating his grounds for relief, petitioner
27 inconsistently checks boxes asserting that he raised his two claims in a habeas
28 petition to the California Supreme Court. (Petition at 5-6).

1 In light of petitioner's inconsistent indications as to whether or not he has
2 raised his two current claims in the California Supreme Court, and the apparent
3 absence of any indication from the dockets of the California Supreme Court that he
4 has done so, IT IS HEREBY ORDERED that within fourteen (14) days of the date
5 of this order, petitioner shall show cause, in writing, why this action should not be
6 dismissed without prejudice for failure to exhaust state remedies, that is, the failure
7 to present to, and have his claims resolved by the **California Supreme Court**. If
8 petitioner contends that he has, in fact, presented his claims to the **California**
9 **Supreme Court** and that such court has ruled thereon, his response to this Order to
10 Show Cause shall indicate how and when petitioner raised his claims with the
11 California Supreme Court (including any name variation he used if different than
12 James Ambrosia Williams), shall include the date of the California Supreme
13 Court's decision regarding his claims and the case number, and shall attach a copy
14 of such decision, if it is available.

15 DATED: June 15, 2015

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/s/

18 Honorable Jacqueline Chooljian
19 UNITED STATES MAGISTRATE JUDGE
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