

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JUAN JOSE RAMIREZ,

Petitioner,

v.

KEN CLARK, Warden,

Respondent.

1:08-CV-01011 OWW GSA HC

ORDER ADOPTING FINDINGS AND
RECOMMENDATION [Doc. #14]

ORDER GRANTING RESPONDENT'S
MOTION TO DISMISS [Doc. #12]

ORDER DENYING PETITIONER'S
MOTION FOR STAY [Doc. #13]

ORDER CONSTRUING PETITIONER'S
AMENDED PETITION AS OBJECTIONS
AND DIRECTING CLERK OF COURT TO
RETURN LODGED AMENDED PETITION
[Docs. #15, 16]

ORDER DISMISSING PETITION AND
DIRECTING CLERK OF COURT TO ENTER
JUDGMENT

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On December 12, 2008, the Magistrate Judge issued a [Findings and Recommendation](#) that recommended Respondent's motion to dismiss the petition be GRANTED and the petition be DISMISSED for failure to exhaust state remedies. The Magistrate Judge further recommended that

1 Petitioner's motion for stay be DENIED. The Findings and Recommendation was served on all
2 parties and contained notice that any objections were to be filed within fifteen (15) days of the date
3 of service of the order. Over fifteen (15) days passed, and Petitioner did not file objections.

4 On January 5, 2009, Petitioner filed a document entitled "Amended Petition to Submit
5 Exhausted Claim." He also lodged an amended petition including the purported exhausted claim.
6 Petitioner argues that the claims he presented in his federal petition have indeed been exhausted as
7 shown by exhibits attached to the lodged amended petition. Since Petitioner is essentially
8 challenging the Magistrate Judge's Findings and Recommendation, the Court will construe the
9 document entitled "Amended Petition to Submit Exhausted Claim" as Petitioner's objections.

10 Petitioner points to a letter from the California Supreme Court dated December 26, 2008, in
11 which Petitioner was advised that his "Amended Petition for Writ of Habeas Corpus" was being
12 returned unfiled because his petition had already been denied on January 16, 2008. See Petitioner's
13 Objections, Exhibit B. Petitioner is advised that this does not demonstrate exhaustion. Petitioner
14 attempted to file an amended petition in a closed case. This was procedurally improper, and
15 therefore, the California Supreme Court rejected the amended petition and returned it to him. To
16 accomplish exhaustion of his federal claims, Petitioner is advised he must submit a new petition in
17 the California Supreme Court raising the federal basis of his claims.

18 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a *de*
19 *novo* review of the case. Having carefully reviewed the entire file and having considered the
20 objections, the Court concludes that the Magistrate Judge's Findings and Recommendation is
21 supported by the record and proper analysis, and there is no need to modify the Findings and
22 Recommendations based on the points raised in the objections.

23 Accordingly, IT IS HEREBY ORDERED that:

- 24 1. The Findings and Recommendation issued December 12, 2008, is ADOPTED IN FULL;
25 2. Respondent's motion to dismiss is GRANTED;
26 3. Petitioner's motion for stay is DENIED;
27 4. Petitioner's "Amended Petition to Submit Exhausted Claim" is CONSTRUED as
28 Petitioner's objections;

1 5. The Petition for Writ of Habeas Corpus is DISMISSED without prejudice;
2 6. The Clerk of Court is DIRECTED to enter judgment and return the lodged amended
3 petition to Petitioner; and
4 7. As this petition concerns a parole decision, a certificate of appealability is not required.
5 Rosas v. Nielsen, 428 F.3d 1229, 1232 (9th Cir.2005).
6 IT IS SO ORDERED.

7 **Dated: January 15, 2009**

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE