

1 petition for writ of habeas corpus must exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1). The
2 exhaustion doctrine is based on comity to the state court and gives the state court the initial
3 opportunity to correct the state's alleged constitutional deprivations. Coleman v. Thompson, 501
4 U.S. 722, 731 (1991); Rose v. Lundy, 455 U.S. 509, 518 (1982); Buffalo v. Sunn, 854 F.2d 1158,
5 1163 (9th Cir. 1988).

6 A petitioner can satisfy the exhaustion requirement by providing the highest state court with a
7 full and fair opportunity to consider each claim before presenting it to the federal court. Duncan v.
8 Henry, 513 U.S. 364, 365 (1995); Picard v. Connor, 404 U.S. 270, 276 (1971); Johnson v. Zenon, 88
9 F.3d 828, 829 (9th Cir. 1996). A federal court will find that the highest state court was given a full
10 and fair opportunity to hear a claim if the petitioner has presented the highest state court with the
11 claim's factual and legal basis. Duncan, 513 U.S. at 365 (legal basis); Kenney v. Tamayo-Reyes, 504
12 U.S. 1,9 (1992) (factual basis).

13 Additionally, the petitioner must have specifically told the state court that he was raising a
14 federal constitutional claim. Duncan, 513 U.S. at 365-66; Lyons v. Crawford, 232 F.3d 666, 669
15 (9th Cir.2000), *amended*, 247 F.3d 904 (2001); Hiivala v. Wood, 195 F.3d 1098, 1106 (9th
16 Cir.1999); Keating v. Hood, 133 F.3d 1240, 1241 (9th Cir.1998). In Duncan, the United States
17 Supreme Court reiterated the rule as follows:

18 In Picard v. Connor, 404 U.S. 270, 275 . . . (1971), we said that exhaustion
19 of state remedies requires that petitioners "fairly present" federal claims to the
20 state courts in order to give the State the "'opportunity to pass upon and correct'
21 alleged violations of the prisoners' federal rights" (some internal quotation marks
22 omitted). If state courts are to be given the opportunity to correct alleged violations
23 of prisoners' federal rights, they must surely be alerted to the fact that the prisoners
24 are asserting claims under the United States Constitution. If a habeas petitioner
25 wishes to claim that an evidentiary ruling at a state court trial denied him the due
26 process of law guaranteed by the Fourteenth Amendment, he must say so, not only
27 in federal court, but in state court.

28 Duncan, 513 U.S. at 365-366. The Ninth Circuit examined the rule further, stating:

Our rule is that a state prisoner has not "fairly presented" (and thus
exhausted) his federal claims in state court *unless he specifically indicated to
that court that those claims were based on federal law*. See Shumway v. Payne,
223 F.3d 982, 987-88 (9th Cir. 2000). Since the Supreme Court's decision in
Duncan, this court has held that the *petitioner must make the federal basis of the
claim explicit either by citing federal law or the decisions of federal courts, even
if the federal basis is "self-evident,"* Gatlin v. Madding, 189 F.3d 882, 889
(9th Cir. 1999) (citing Anderson v. Harless, 459 U.S. 4, 7 . . . (1982), or the

1 underlying claim would be decided under state law on the same considerations
2 that would control resolution of the claim on federal grounds. Hiivala v. Wood,
3 195 F.3d 1098, 1106-07 (9th Cir. 1999); Johnson v. Zenon, 88 F.3d 828, 830-31
4 (9th Cir. 1996);

5 In Johnson, we explained that the petitioner must alert the state court to
6 the fact that the relevant claim is a federal one without regard to how similar the
7 state and federal standards for reviewing the claim may be or how obvious the
8 violation of federal law is.

9 Lyons v. Crawford, 232 F.3d 666, 668-669 (9th Cir. 2000) (italics added).

10 Upon review of the instant petition for writ of habeas corpus, it appears that Petitioner has
11 not presented his claims to the California Supreme Court. If Petitioner has not presented all of his
12 claims to the California Supreme Court, the Court cannot proceed to the merits of those claims. 28
13 U.S.C. § 2254(b)(1). It is possible, however, that Petitioner has presented his claims to the California
14 Supreme Court and simply neglected to inform this Court. Thus, Petitioner must inform the Court if
15 his claims have been presented to the California Supreme Court, and if possible, provide the Court
16 with a copy of the petition filed in the California Supreme Court, along with a copy of any ruling
17 made by the California Supreme Court. Without knowing what claims have been presented to the
18 California Supreme Court, the Court is unable to proceed to the merits of the petition.

19 **ORDER**

20 Accordingly, Petitioner is ORDERED TO SHOW CAUSE why the petition should not be
21 dismissed for Petitioner's failure to exhaust state remedies. Petitioner is ORDERED to inform the
22 Court what claims have been presented to the California Supreme Court within thirty (30) days of the
23 date of service of this order.

24 Petitioner is forewarned that failure to follow this order will result in dismissal of the petition
25 pursuant to Local Rule 110.

26 IT IS SO ORDERED.

27 **Dated:** April 29, 2010

28 /s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE