



1 exhaustion doctrine is based on comity to the state court and gives the state court the initial  
2 opportunity to correct the state's alleged constitutional deprivations. Coleman v. Thompson, 501  
3 U.S. 722, 731 (1991); Rose v. Lundy, 455 U.S. 509, 518 (1982); Buffalo v. Sunn, 854 F.2d 1158,  
4 1163 (9th Cir. 1988).

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

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

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

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

28 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  
underlying claim would be decided under state law on the same considerations  
that would control resolution of the claim on federal grounds. Hiivala v. Wood,

1 195 F3d 1098, 1106-07 (9th Cir. 1999); Johnson v. Zenon, 88 F.3d 828, 830-31  
2 (9th Cir. 1996); . . . .

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

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

8 Upon review of the instant petition for writ of habeas corpus, it appears that Petitioner has  
9 not presented his claims to the California Supreme Court. Petitioner has only attached copies of  
10 documents submitted to the Court of Appeal of the State of California, Fifth Appellate District.  
11 (Court Doc. 1, p. 28.) Accordingly, this Court cannot determine which, if any, of his claims have  
12 been exhausted. If Petitioner has not presented his claims to the California Supreme Court, the Court  
13 cannot proceed to the merits of those claims. 28 U.S.C. § 2254(b)(1). It is possible, however, that  
14 Petitioner has presented his claims to the California Supreme Court and simply neglected to inform  
15 this Court. Thus, Petitioner will be given an opportunity to inform the Court if his claims have been  
16 presented to the California Supreme Court, and if possible, to provide the Court with a copy of the  
17 petition filed in the California Supreme Court along with a copy of any ruling made by the California  
18 Supreme Court. Without knowing what claims have been presented to the California Supreme  
19 Court, the Court is unable to proceed to the merits of the petition.

20 **ORDER**

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

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

27 IT IS SO ORDERED.

28 Dated: June 7, 2010

/s/ Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE