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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MIGUEL GARCIA NUNEZ,

1:10-cv-00524-DLB (HC)

Petitioner,

ORDER TO SHOW CAUSE REGARDING
EXHAUSTION OF STATE COURT
REMEDIES

v.

[Doc. 1]

R. GROUNDS,

Respondent.

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

On the form petition, Petitioner indicates on July 23, 2007, he was convicted in the California Superior Court for the County of Fresno of second degree burglary with a gun enhancement. (Petition, at 1.) Petitioner raises two separate challenges to his conviction. However, in reviewing Petitioner’s petition it is not clear what, if any, claims were exhausted in the California Supreme Court.

A petitioner who is in state custody and wishes to collaterally challenge his conviction by a petition for writ of habeas corpus must exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1). The exhaustion doctrine is based on comity to the state court and gives the state court the initial opportunity to correct the state's alleged constitutional deprivations. Coleman v. Thompson, 501 U.S. 722, 731, 111 S.Ct. 2546, 2554-55 (1991); Rose v. Lundy, 455 U.S. 509, 518, 102 S.Ct. 1198, 1203 (1982); Buffalo v. Sunn, 854 F.2d 1158, 1163 (9th Cir. 1988).

1 A petitioner can satisfy the exhaustion requirement by providing the highest state court
2 with a full and fair opportunity to consider each claim before presenting it to the federal court.
3 Picard v. Connor, 404 U.S. 270, 276, 92 S.Ct. 509, 512 (1971); Johnson v. Zenon, 88 F.3d 828,
4 829 (9th Cir. 1996). A federal court will find that the highest state court was given a full and fair
5 opportunity to hear a claim if the petitioner has presented the highest state court with the claim's
6 factual and legal basis. Duncan v. Henry, 513 U.S. 364, 365, 115 S.Ct. 887, 888 (1995) (legal
7 basis); Kenney v. Tamayo-Reyes, 504 U.S. 1, 112 S.Ct. 1715, 1719 (1992) (factual basis).
8 Additionally, the petitioner must have specifically told the state court that he was raising a
9 federal constitutional claim. Duncan, 513 U.S. at 365-66, 115 S.Ct. at 888; Keating v. Hood, 133
10 F.3d 1240, 1241 (9th Cir.1998). For example, if a petitioner wishes to claim that the trial court
11 violated his due process rights "he must say so, not only in federal court but in state court."
12 Duncan, 513 U.S. at 366, 115 S.Ct. at 888.

13 Because it is unclear what, if any, claims presented in the instant federal petition for writ
14 of habeas corpus were exhausted in the state's highest court, Petitioner will be ordered to show
15 cause regarding exhaustion. If possible, Petitioner should present to the Court documentary
16 evidence that the claims were indeed presented to the California Supreme Court.¹

17 Accordingly, it is HEREBY ORDERED that:

- 18 1. Within thirty (30) days from the date of service of this order, Petitioner shall show
19 cause as to what claims, if any, were presented to the state's highest court.
- 20 2. Failure to comply with this order may result in the action be dismissed for failure
21 to comply with a court order. Local Rule 11-110.

22 IT IS SO ORDERED.

23 **Dated: April 19, 2010**

23 **/s/ Dennis L. Beck**
24 **UNITED STATES MAGISTRATE JUDGE**

27 ¹A copy of the California Supreme Court's denial alone is insufficient to demonstrate exhaustion. The
28 proper documentation to provide would be a copy of the Petition *filed* in the California Supreme Court that includes
the claim now presented and a file stamp showing that it was indeed filed in that Court.