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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DEENA VELASQUEZ,)	1:10-cv-00614-SKO-HC
)	
Petitioner,)	ORDER TO PETITIONER TO SHOW CAUSE
)	WHY THE PETITION SHOULD NOT BE
v.)	DISMISSED FOR PETITIONER'S
)	FAILURE TO EXHAUST STATE REMEDIES
)	(Doc. 1)
WARDEN MARY LATTIMORE,)	
)	
Respondent.)	
)	
)	

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 72-302 and 72-303. Pending before the Court is Petitioner's petition, which was filed in this Court on April 8, 2010. The petition concerns the denial of Petitioner's parole on January 27, 2009. (Pet. 9.)

I. Exhaustion of State Court Remedies

A petitioner who is in state custody and wishes to challenge collaterally a 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

1 gives the state court the initial opportunity to correct the
2 state's alleged constitutional deprivations. Coleman v.
3 Thompson, 501 U.S. 722, 731 (1991); Rose v. Lundy, 455 U.S. 509,
4 518 (1982); Buffalo v. Sunn, 854 F.2d 1158, 1162-63 (9th Cir.
5 1988).

6 A petitioner can satisfy the exhaustion requirement by
7 providing the highest state court with the necessary jurisdiction
8 a full and fair opportunity to consider each claim before
9 presenting it to the federal court, and demonstrating that no
10 state remedy remains available. Picard v. Connor, 404 U.S. 270,
11 275-76 (1971); Johnson v. Zenon, 88 F.3d 828, 829 (9th Cir.
12 1996). A federal court will find that the highest state court
13 was given a full and fair opportunity to hear a claim if the
14 petitioner has presented the highest state court with the claim's
15 factual and legal basis. Duncan v. Henry, 513 U.S. 364, 365
16 (1995) (legal basis); Kenney v. Tamayo-Reyes, 504 U.S. 1, 9-10
17 (1992), superceded by statute as stated in Williams v. Taylor,
18 529 U.S. 362 (2000) (factual basis).

19 Additionally, the petitioner must have specifically told the
20 state court that he was raising a federal constitutional claim.
21 Duncan, 513 U.S. at 365-66; Lyons v. Crawford, 232 F.3d 666, 669
22 (9th Cir. 2000), amended, 247 F.3d 904 (9th Cir. 2001); Hiivala
23 v. Wood, 195 F.3d 1098, 1106 (9th Cir. 1999); Keating v. Hood,
24 133 F.3d 1240, 1241 (9th Cir. 1998). In Duncan, the United
25 States Supreme Court reiterated the rule as follows:

26 In Picard v. Connor, 404 U.S. 270, 275...(1971),
27 we said that exhaustion of state remedies requires that
28 petitioners "fairly presen[t]" federal claims to the
state courts in order to give the State the
"'opportunity to pass upon and correct' alleged

1 violations of the prisoners' federal rights" (some
2 internal quotation marks omitted). If state courts are
3 to be given the opportunity to correct alleged violations
4 of prisoners' federal rights, they must surely be
5 alerted to the fact that the prisoners are asserting
6 claims under the United States Constitution. If a
7 habeas petitioner wishes to claim that an evidentiary
8 ruling at a state court trial denied him the due
9 process of law guaranteed by the Fourteenth Amendment,
10 he must say so, not only in federal court, but in state
11 court.

12 Duncan, 513 U.S. at 365-366. The Ninth Circuit examined the rule
13 further in Lyons v. Crawford, 232 F.3d 666, 668-69 (9th Cir.
14 2000), as amended by Lyons v. Crawford, 247 F.3d 904, 904-05 (9th
15 Cir. 2001), stating:

16 Our rule is that a state prisoner has not "fairly
17 presented" (and thus exhausted) his federal claims
18 in state court unless he specifically indicated to
19 that court that those claims were based on federal law.
20 See, Shumway v. Payne, 223 F.3d 982, 987-88 (9th Cir.
21 2000). Since the Supreme Court's decision in Duncan,
22 this court has held that the petitioner must make the
23 federal basis of the claim explicit either by citing
24 federal law or the decisions of federal courts, even
25 if the federal basis is "self-evident," Gatlin v. Madding,
26 189 F.3d 882, 889 (9th Cir. 1999) (citing Anderson v.
27 Harless, 459 U.S. 4, 7... (1982)), or the underlying
28 claim would be decided under state law on the same
considerations that would control resolution of the claim
on federal grounds, see, e.g., Hiivala v. Wood, 195
F.3d 1098, 1106-07 (9th Cir. 1999); Johnson v. Zenon,
88 F.3d 828, 830-31 (9th Cir. 1996); Crotts, 73 F.3d
at 865.

...

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

Lyons v. Crawford, 232 F.3d 666, 668-69 (9th Cir. 2000), as
amended by Lyons v. Crawford, 247 F.3d 904, 904-05 (9th Cir.
2001).

Where none of a petitioner's claims has been presented to
the highest state court as required by the exhaustion doctrine,

1 the Court must dismiss the petition. Raspberry v. Garcia, 448
2 F.3d 1150, 1154 (9th Cir. 2006); Jiminez v. Rice, 276 F.3d 478,
3 481 (9th Cir. 2001). The authority of a court to hold a mixed
4 petition in abeyance pending exhaustion of the unexhausted claims
5 has not been extended to petitions that contain no exhausted
6 claims. Raspberry, 448 F.3d at 1154.

7 Petitioner alleges that she sought a writ of habeas corpus
8 in the state Superior Court, which was denied on November 6,
9 2009. Further, attached to the petition is an order denying a
10 petition for writ of habeas corpus in the California Court of
11 Appeal, Fifth Appellate District. (Pet. 156.) However,
12 Petitioner does not describe any proceedings in the California
13 supreme Court in which she exhausted her claims. Therefore, upon
14 review of the instant petition for writ of habeas corpus, it
15 appears that Petitioner has not presented her claims to the
16 California Supreme Court. If Petitioner has not presented all of
17 her claims to the California Supreme Court, the Court cannot
18 proceed to the merits of those claims. 28 U.S.C. § 2254(b)(1).
19 It is possible, however, that Petitioner has presented her claims
20 to the California Supreme Court and simply neglected to inform
21 this Court.

22 Thus, Petitioner must inform the Court if her claims have
23 been presented to the California Supreme Court, and if possible,
24 provide the Court with a copy of the petition filed in the
25 California Supreme Court, along with a copy of any ruling made by
26 the California Supreme Court. Without knowing what claims have
27 been presented to the California Supreme Court, the Court is
28 unable to proceed to the merits of the petition.

1 II. Order to Show Cause

2 Accordingly, Petitioner is ORDERED to show cause why the
3 petition should not be dismissed for Petitioner's failure to
4 exhaust state remedies. Petitioner is ORDERED to inform the
5 Court what claims have been presented to the California Supreme
6 Court within thirty (30) days of the date of service of this
7 order.

8 Petitioner is forewarned that failure to follow this order
9 will result in dismissal of the petition pursuant to Local Rule
10 11-110.

11
12 IT IS SO ORDERED.

13 **Dated: June 18, 2010**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE