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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

STEPHEN GARCIA,

1:10-cv-00655 DLB HC

Petitioner,

ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS

v.

[Doc. 1]

FRESNO COUNTY COURTHOUSE,

Respondent.

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pursuant to 28 U.S.C. § 636(c)(1), Petitioner consented to the jurisdiction of the United States Magistrate Judge. Local Rule 305(b).

Petitioner filed the instant petition for writ of habeas corpus on April 15, 2010. Petitioner contends the trial court imposed an illegal enhancement after his case was dismissed, and his probation officer has failed to appear in court. The petition must be dismissed.

DISCUSSION

Rule 4 of the Rules Governing § 2254 Cases requires the Court to make a preliminary review of each petition for writ of habeas corpus. The Court must dismiss a petition "[i]f it plainly appears from the face of the petition . . . that the petition is not entitled to relief." Rule 4 of the Rules Governing 2254 Cases; see also Hendricks v. Vasquez, 908 F.2d 490 (9th Cir. 1990).

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1 A petitioner who is in state custody and wishes to collaterally challenge his conviction by
2 a petition for writ of habeas corpus must exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1).
3 The exhaustion doctrine is based on comity to the state court and gives the state court the initial
4 opportunity to correct the state's alleged constitutional deprivations. Coleman v. Thompson, 501
5 U.S. 722, 731, 111 S.Ct. 2546, 2554-55 (1991); Rose v. Lundy, 455 U.S. 509, 518, 102 S.Ct.
6 1198, 1203 (1982); Buffalo v. Sunn, 854 F.2d 1158, 1163 (9th Cir. 1988).

7 A petitioner can satisfy the exhaustion requirement by providing the highest state court
8 with a full and fair opportunity to consider each claim before presenting it to the federal court.
9 Picard v. Connor, 404 U.S. 270, 276, 92 S.Ct. 509, 512 (1971); Johnson v. Zenon, 88 F.3d 828,
10 829 (9th Cir. 1996). A federal court will find that the highest state court was given a full and fair
11 opportunity to hear a claim if the petitioner has presented the highest state court with the claim's
12 factual and legal basis. Duncan v. Henry, 513 U.S. 364, 365, 115 S.Ct. 887, 888 (1995) (legal
13 basis); Kenney v. Tamayo-Reyes, 504 U.S. 1, 112 S.Ct. 1715, 1719 (1992) (factual basis).
14 Additionally, the petitioner must have specifically told the state court that he was raising a
15 federal constitutional claim. Duncan, 513 U.S. at 365-66, 115 S.Ct. at 888; Keating v. Hood, 133
16 F.3d 1240, 1241 (9th Cir.1998). For example, if a petitioner wishes to claim that the trial court
17 violated his due process rights "he must say so, not only in federal court but in state court."
18 Duncan, 513 U.S. at 366, 115 S.Ct. at 888. A general appeal to a constitutional guarantee is
19 insufficient to present the "substance" of such a federal claim to a state court. See Anderson v.
20 Harless, 459 U.S. 4, 7, 103 S.Ct. 276 (1982) (Exhaustion requirement not satisfied circumstance
21 that the "due process ramifications" of an argument might be "self-evident."); Gray v.
22 Netherland, 518 U.S. 152, 162-63, 116 S.Ct. 1074 (1996) ("a claim for relief in habeas corpus
23 must include reference to a specific federal constitutional guarantee, as well as a statement of the
24 facts which entitle the petitioner to relief.").

25 Additionally, the petitioner must have specifically told the state court that he was raising
26 a federal constitutional claim. Duncan, 513 U.S. at 365-66; Lyons v. Crawford, 232 F.3d 666,
27 669 (9th Cir.2000), *amended*, 247 F.3d 904 (2001); Hiiivala v. Wood, 195 F.3d 1098, 1106 (9th
28 ///

1 Cir.1999); Keating v. Hood, 133 F.3d 1240, 1241 (9th Cir.1998). In Duncan, the United States
2 Supreme Court reiterated the rule as follows:

3 In Picard v. Connor, 404 U.S. 270, 275 . . . (1971), we said that exhaustion
4 of state remedies requires that petitioners "fairly presen[t]" federal claims to the
5 state courts in order to give the State the "opportunity to pass upon and correct
6 alleged violations of the prisoners' federal rights" (some internal quotation marks
7 omitted). If state courts are to be given the opportunity to correct alleged violations
8 of prisoners' federal rights, they must surely be alerted to the fact that the prisoners
9 are asserting claims under the United States Constitution. If a habeas petitioner
10 wishes to claim that an evidentiary ruling at a state court trial denied him the due
11 process of law guaranteed by the Fourteenth Amendment, he must say so, not only
12 in federal court, but in state court.

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

10 Our rule is that a state prisoner has not "fairly presented" (and thus
11 exhausted) his federal claims in state court *unless he specifically indicated to*
12 *that court that those claims were based on federal law.* See Shumway v. Payne,
13 223 F.3d 982, 987-88 (9th Cir. 2000). Since the Supreme Court's decision in
14 Duncan, this court has held that the *petitioner must make the federal basis of the*
15 *claim explicit either by citing federal law or the decisions of federal courts, even*
16 *if the federal basis is "self-evident,"* Gatlin v. Madding, 189 F.3d 882, 889
17 (9th Cir. 1999) (citing Anderson v. Harless, 459 U.S. 4, 7 . . . (1982), or the
18 underlying claim would be decided under state law on the same considerations
19 that would control resolution of the claim on federal grounds. Hiiivala v. Wood,
20 195 F3d 1098, 1106-07 (9th Cir. 1999); Johnson v. Zenon, 88 F.3d 828, 830-31
21 (9th Cir. 1996);

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

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

20 Here, Petitioner is challenging actions by his counsel regarding his pending criminal
21 charges in state court. However, Petitioner acknowledges that he did not seek review in the
22 California Supreme Court. (Petition, at 5.) Thus, the Court must dismiss the petition because it
23 contains unexhausted claims. Rose v. Lundy, 455 U.S. at 521-522.

24 ORDER

25 Accordingly, it is HEREBY ORDERED that:

- 26 1. The instant petition for writ of habeas corpus is dismissed;
- 27 2. The Clerk of Court is directed to terminate this action; and
- 28 3. The Court declines to issue a Certificate of Appealability. 28 U.S.C. § 2253(c);

