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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

ANTWOINE SCONIERS,  
Petitioner,  
v.  
SOLANO SUPERIOR COURT, et al.,  
Respondents.

Case No. 1:14-cv-01915-AWI-GSA-HC  
FINDINGS AND RECOMMENDATION  
REGARDING PETITION FOR WRIT OF  
HABEAS CORPUS  
(ECF No. 1)

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

On December 3, 2014, Petitioner filed the instant petition for writ of habeas corpus in this Court. (Pet., ECF No. 1). Petitioner argues that his prior felony convictions should be reduced to misdemeanors because of the new Proposition 47 that was passed in November 2014. (Pet. at 3-4).<sup>1</sup> Petitioner also argues that he should receive a reduction in his current prison term because he now has no convictions that would qualify for the prison prior enhancements that he was sentenced to as part of his current sentence. (Pet. at 4). Petitioner has pending Proposition 47 applications in several California Superior Courts and pending petitions for writs of habeas corpus. (Pet. at 6).

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<sup>1</sup> Page numbers refer to the ECF page numbers.

1 **I.**

2 **DISCUSSION**

3 **A. Procedural Grounds for Summary Dismissal**

4 Rule 4 of the Rules Governing § 2254 Cases requires the Court to make a preliminary  
5 review of each petition for writ of habeas corpus. The Court must dismiss a petition "[i]f it  
6 plainly appears from the petition . . . that the petitioner is not entitled to relief." Rule 4 of the  
7 Rules Governing Section 2254 Cases; see also Hendricks v. Vasquez, 908 F.2d 490 (9th  
8 Cir.1990). The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a  
9 petition for writ of habeas corpus, either on its own motion under Rule 4, pursuant to the  
10 respondent's motion to dismiss, or after an answer to the petition has been filed. A petition for  
11 habeas corpus should not be dismissed without leave to amend unless it appears that no tenable  
12 claim for relief can be pleaded were such leave granted. See Jarvis v. Nelson, 440 F.2d 13, 14  
13 (9th Cir. 1971).

14 **B. Failure to Exhaust State Judicial Remedies**

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

20 A petitioner can satisfy the exhaustion requirement by providing the highest state court  
21 with a full and fair opportunity to consider each claim before presenting it to the federal court.  
22 Duncan v. Henry, 513 U.S. 364, 365 (1995); Picard v. Connor, 404 U.S. 270, 276 (1971);  
23 Johnson v. Zenon, 88 F.3d 828, 829 (9th Cir. 1996). A federal court will find that the highest  
24 state court was given a full and fair opportunity to hear a claim if the petitioner has presented the  
25 highest state court with the claim's factual and legal basis. Duncan, 513 U.S. at 365 (legal basis);  
26 Kenney v. Tamayo-Reyes, 504 U.S. 1, 112 S.Ct. 1715, 1719 (1992) (factual basis).

27 Additionally, the petitioner must have specifically told the state court that he was raising  
28 a federal constitutional claim. Duncan, 513 U.S. at 365-66; Lyons v. Crawford, 232 F.3d 666,



1 after service of the objections. The Court will then review the Magistrate Judge's ruling  
2 pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file objections  
3 within the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, \_\_\_  
4 F.3d \_\_\_, \_\_\_, No. 11-17911, 2014 WL 6435497, at \*3 (9th Cir. Nov. 18, 2014) (citing *Baxter v.*  
5 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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7 IT IS SO ORDERED.

8 Dated: December 11, 2014

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE

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