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

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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). 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).

¹ Page numbers refer to the ECF page numbers.

I.

DISCUSSION

A. Procedural Grounds for Summary Dismissal

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

B. Failure to Exhaust State Judicial Remedies

A petitioner who is in state custody proceeding with 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 (1991); Rose v. Lundy, 455 U.S. 509, 518 (1982); Buffalo v. Sunn, 854 F.2d 1158, 1163 (9th Cir. 1988).

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

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

669 (9th Cir.2000), amended, 247 F.3d 904 (2001); Hiivala v. Wood, 195 F.3d 1098, 1106 (9th Cir.1999); Keating v. Hood, 133 F.3d 1240, 1241 (9th Cir.1998). In Duncan, the United States Supreme Court reiterated the rule as follows:

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

<u>Duncan</u>, 513 U.S. at 365-66 (internal citations omitted).

A review of the instant petition for writ of habeas corpus reveals that Petitioner has not sought review for his claims in the California Supreme Court. It appears that Petitioner has pending Proposition 47 applications in several California Superior Courts, as well as pending petitions for writs of habeas corpus. Since Petitioner has not presented all of his claims to the highest state court, this Court cannot proceed to the merits of those claims. Therefore, the petition should be dismissed without prejudice. See 28 U.S.C. § 2254(b)(1).

II.

RECOMMENDATION

Accordingly, the Court HEREBY RECOMMENDS that the petition for writ of habeas corpus be DISMISSED without prejudice.

This Findings and Recommendation is submitted to the assigned United States District Court Judge pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court, Eastern District of California. Within thirty (30) days after being served with a copy, Petitioner may file written objections with the Court. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendation." Replies to the objections shall be served and filed within fourteen (14) days

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 <i>Baxter v</i> .
5	Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).
6	
7	IT IS SO ORDERED.
8	Dated: December 11, 2014 /s/ Gary S. Austin UNITED STATES MAGISTRATE JUDGE
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
2324	
25	
23 26	
27	
28	