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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DENO E. WOODIS,

Petitioner,

v.

D. MORALES, et al.,

Respondents.

Case No. 1:15-cv-00071 LJO MJS (HC)

**ORDER TO SHOW CAUSE WHY THE
PETITION SHOULD NOT BE DISMISSED
FOR PETITIONER'S FAILURE TO
EXHAUST STATE REMEDIES**

Petitioner is a civil detainee proceeding *pro se* with a petition for writ of habeas corpus under 28 U.S.C. § 2254. Petitioner challenges a December, 2014, conviction for assault and battery.¹ (Pet., ECF No. 1.) Petitioner does not state that he sought review from any state court, including the California Supreme Court.

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¹ The Court finds it unclear as to whether Petitioner is attempting to challenge his conviction, or if he asserting that his civil rights were violated due to the conditions of his confinement at the time of the criminal incident. If Petitioner is not challenging his conviction, he should proceed by way of a civil rights complaint. To promote judicial economy, the Court assumes that Petitioner is attempting to challenge the fact or duration of his confinement, and it here proceeds to determine whether he exhausted his claims in state court. Regardless, if his claims are not cognizable in habeas or if he has not exhausted his claims in state court, the result is the same – dismissal without prejudice.

1 **I. DISCUSSION**

2 Rule 4 of the Rules Governing § 2254 Cases requires the Court to make a
3 preliminary review of each petition for writ of habeas corpus. The Court must dismiss a
4 petition "[i]f it plainly appears from the petition . . . that the petitioner is not entitled to
5 relief." Rule 4 of the Rules Governing § 2254 Cases; Hendricks v. Vasquez, 908 F.2d
6 490 (9th Cir.1990). Otherwise, the Court will order Respondent to respond to the petition.
7 Rule 5 of the Rules Governing § 2254 Cases.

8 A petitioner who is in state custody and wishes to collaterally challenge his
9 conviction by a petition for writ of habeas corpus must exhaust state judicial remedies.
10 28 U.S.C. § 2254(b)(1). The exhaustion doctrine is based on comity to the state court
11 and gives the state court the initial opportunity to correct the state's alleged constitutional
12 deprivations. Coleman v. Thompson, 501 U.S. 722, 731 (1991); Rose v. Lundy, 455 U.S.
13 509, 518 (1982); Buffalo v. Sunn, 854 F.2d 1158, 1163 (9th Cir. 1988).

14 A petitioner can satisfy the exhaustion requirement by providing the highest state
15 court with a full and fair opportunity to consider each claim before presenting it to the
16 federal court. Duncan v. Henry, 513 U.S. 364, 365 (1995); Picard v. Connor, 404 U.S.
17 270, 276 (1971); Johnson v. Zenon, 88 F.3d 828, 829 (9th Cir. 1996). A federal court will
18 find that the highest state court was given a full and fair opportunity to hear a claim if the
19 petitioner has presented the highest state court with the claim's factual and legal basis.
20 Duncan, 513 U.S. at 365 (legal basis); Kenney v. Tamayo-Reyes, 504 U.S. 1, 9 (1992)
21 (factual basis).

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

27 In Picard v. Connor, 404 U.S. 270, 275 . . . (1971), we said that
28 exhaustion of state remedies requires that petitioners "fairly present"
federal claims to the state courts in order to give the State the

1 "opportunity to pass upon and correct' alleged violations of the prisoners'
2 federal rights" (some internal quotation marks omitted). If state courts are
3 to be given the opportunity to correct alleged violations of prisoners'
4 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.

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

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

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

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

17 Upon review of the instant petition for writ of habeas corpus, it appears that
18 Petitioner has not presented his claims to the highest state court, the California Supreme
19 Court. Petitioner must inform the Court if, in fact, his claims have been presented to the
20 California Supreme Court, and if possible, provide the Court with copies of the state
21 court filings. Without knowing if Petitioner's claims have been presented to the California
22 Supreme Court, the Court is unable to proceed to the merits of the petition. 28 U.S.C. §
23 2254(b)(1).

24 **II. ORDER**

25 Petitioner is ORDERED TO SHOW CAUSE why the petition should not be
26 dismissed for Petitioner's failure to exhaust state remedies. Petitioner is ORDERED to
27 inform the Court if his claims have been presented to the California Supreme Court
28 within thirty (30) days of the date of service of this order.

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

IT IS SO ORDERED.

Dated: January 22, 2015

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE