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

10 **TROY D. WILLIAMS,**

11
12 Petitioner,

13 v.

14 **EDMUND G. BROWN,**

15
16 Respondent.

Case No. 1:15-cv-00465 MJS (HC)

**FINDINGS AND RECOMMENDATION TO
DISMISS PETITION FOR WRIT OF
HABEAS CORPUS FOR FAILURE TO
EXHAUST STATE REMEDIES**

**ORDER DIRECTING CLERK OF COURT TO
ASSIGN DISTRICT COURT JUDGE TO THE
PRESENT MATTER**

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18 Petitioner is a state prisoner proceeding pro se with a Petition for Writ of Habeas
19 Corpus pursuant to 28 U.S.C. § 2254.

20 **I. BACKGROUND**

21 Petitioner is currently in the custody of the California Department of Corrections.
22 Petitioner was convicted on March 12, 2013 of unlawful driving or taking of a motor
23 vehicle. In his petition, Petitioner does not challenge his underlying conviction. Instead,
24 he challenges the calculation of the rate at which he is entitled to accrue good conduct
25 time. (Pet., ECF No. 1.)

26 Petitioner made no mention in his petition as to whether his claims had been
27 properly presented to the California Supreme Court. Petitioner provides copies of some
28 administrative appeals to correctional officials regarding his good time credit calculation

1 claim. However, he provides no documentation regarding his presentation of the claim to
2 the state courts.

3 On March 30, 2015, this Court ordered Petitioner to show cause why the petition
4 should not be dismissed for failure to exhaust state remedies. Petitioner was forewarned
5 that the failure to comply with the order would result in dismissal of the petition. (Order,
6 ECF No. 12.) The Petitioner was ordered to file the response within thirty days of service
7 of the order to show cause. Petitioner did not file a reply.

8 **II. DISCUSSION**

9 **A. Procedural Grounds to Dismiss Petition**

10 Rule 4 of the Rules Governing Section 2254 Cases allows a district court to
11 dismiss a petition if it “plainly appears from the petition and any attached exhibits that the
12 petitioner is not entitled to relief in the district court” The Advisory Committee Notes
13 to Rule 5 of the Rules Governing § 2254 Cases state that “an alleged failure to exhaust
14 state remedies may be raised by the attorney general, thus avoiding the necessity of a
15 formal answer as to that ground.” Based on the Rules Governing Section 2254 Cases,
16 the Court will determine whether Petitioner is entitled to relief pursuant to its authority
17 under Rule 4.

18 **B. Exhaustion of State Remedies**

19 A petitioner who is in state custody and wishes to collaterally challenge his
20 conviction by a petition for writ of habeas corpus must exhaust state judicial remedies.
21 28 U.S.C. § 2254(b)(1). The exhaustion doctrine is based on comity to the state court
22 and gives the state court the initial opportunity to correct the state's alleged constitutional
23 deprivations. Coleman v. Thompson, 501 U.S. 722, 731 (1991); Rose v. Lundy, 455 U.S.
24 509, 518 (1982).

25 A petitioner can satisfy the exhaustion requirement by providing the highest state
26 court with a full and fair opportunity to consider each claim before presenting it to the
27 federal court. Duncan v. Henry, 513 U.S. 364, 365 (1995); Picard v. Connor, 404 U.S.
28 270, 276 (1971); Johnson v. Zenon, 88 F.3d 828, 829 (9th Cir. 1996). Additionally, the

petitioner must have specifically told the state court that he was raising a federal constitutional claim. Duncan, 513 U.S. at 365-66; Lyons v. Crawford, 232 F.3d 666, 669 (9th Cir. 2000), amended, 247 F.3d 904 (2001). In Duncan, the United States Supreme Court reiterated the rule as follows:

In Picard v. Connor, 404 U.S. 270, 275 . . . (1971), we said that exhaustion of state remedies requires that petitioners "fairly present[]" 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.

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

Our rule is that a state prisoner has not "fairly presented" (and thus exhausted) his federal claims in state court *unless he specifically indicated to that court that those claims were based on federal law*. See Shumway v. Payne, 223 F.3d 982, 987-88 (9th Cir. 2000). Since the Supreme Court's decision in Duncan, this court has held that the *petitioner must make the federal basis of the claim explicit either by citing federal law or 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);

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, 232 F.3d at 668-669 (italics added).

As stated above, Petitioner was informed by the Court that the claims of his federal petition were unexhausted and he was ordered to show cause why the petition should not be dismissed. Petitioner has not provided evidence that the claims were presented to the California courts. The Court is considerate of Petitioner's interest in having the present case adjudicated, however this Court cannot properly hear his claims until they are presented in state court. As Petitioner has not shown that he has

1 exhausted the claims in the instant petition with the California Supreme Court, the
2 petition must be dismissed.

3 **III. RECOMMENDATION**

4 Accordingly, the Court RECOMMENDS that the Petition for Habeas Corpus be
5 DISMISSED without prejudice.¹

6 This Findings and Recommendation is submitted to the assigned United States
7 District Court Judge, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and
8 Rule 304 of the Local Rules of Practice for the United States District Court, Eastern
9 District of California. Within thirty (30) days after the date of service of this Findings and
10 Recommendation, any party may file written objections with the Court and serve a copy
11 on all parties. Such a document should be captioned "Objections to Magistrate Judge's
12 Findings and Recommendation." Replies to the Objections shall be served and filed
13 within fourteen (14) days after service of the Objections. The Finding and
14 Recommendation will then be submitted to the District Court for review of the Magistrate
15 Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(c). The parties are advised that failure
16 to file objections within the specified time may waive the right to appeal the District
17 Court's order. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014).

18
19 IT IS SO ORDERED.

20 Dated: May 11, 2015

21 /s/ Michael J. Seng
22 UNITED STATES MAGISTRATE JUDGE
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27 ¹ A dismissal for failure to exhaust is not a dismissal on the merits, and Petitioner will not be
28 barred from returning to federal court after Petitioner exhausts available state remedies by 28 U.S.C. §
2244 (b)'s prohibition on filing second petitions. See In re Turner, 101 F.3d 1323 (9th Cir. 1996).