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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CARLOS G. SANCHEZ,  
Petitioner,  
v.  
S. FRAUENHEIM,  
Respondent.

No. 1:15-cv-01756-DAD-SKO HC

**FINDINGS AND RECOMMENDATION  
THAT THE COURT DENY PETITION  
FOR WRIT OF HABEAS CORPUS**

**(Doc. 1)**

Petitioner, Carlos G. Sanchez, is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. In his petition, Petitioner presents one ground for habeas relief – ineffective assistance of counsel for failure to investigate. The Court referred the matter to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 302 and 304. Having reviewed the record and applicable law, the undersigned recommends that the Court deny Petitioner’s request for habeas relief due to failure to exhaust state court remedies.

1           **I. Procedural and Factual Background**<sup>1</sup>

2           Petitioner was charged with multiple counts of molesting his stepdaughter over the course  
3 of many years. A jury convicted him of 21 counts of committing a lewd and lascivious act on a  
4 child under 14 years of age (Cal. Penal Code § 288(a)); and one count of committing a lewd and  
5 lascivious act on a child of 14 or 15 years of age when the defendant was at least 10 years older  
6 than the child (Cal. Penal Code § 288(c)(1)). The jury found true the special allegation on several  
7 counts that Petitioner had substantial sexual conduct with the victim while she was under 14 years  
8 of age (Cal. Penal Code § 1203.066(a)(8)). Petitioner was sentenced to a total prison term of 48  
9 years and 8 months.  
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11           On September 16, 2013, Petitioner filed an appeal with the California Court of Appeal,  
12 Fifth Appellate District. Petitioner raised three grounds on his direct appeal: (1) prosecutorial  
13 misconduct; (2) the trial court erroneously imposed a restitution fine; and (3) a separate fine  
14 should have been stricken because the trial court did not mention the fine when pronouncing  
15 judgment. On June 17, 2015, the Court of Appeal struck the two fines, ordered the abstract of  
16 judgment amended, and affirmed the judgment in all other respects.  
17

18           On July 20, 2015, Petitioner filed a Petition for Review with the California Supreme  
19 Court, which was summarily denied on August 26, 2015.  
20

21           On November 19, 2015, Petitioner filed his petition for writ of habeas corpus before this  
22 Court. Respondent filed a response on September 27, 2016.

23           **II. Standard of Review**

24           A person in custody as a result of the judgment of a state court may secure relief through  
25 a petition for habeas corpus if the custody violates the Constitution or laws or treaties of the  
26 United States. 28 U.S.C. § 2254(a); *Williams v. Taylor*, 529 U.S. 362, 375 (2000). On April 24,  
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28           <sup>1</sup> The factual and procedural background are taken from the opinion of the California Court of Appeal, Fifth Appellate District, *People v. Sanchez*, (No. F067975) (Cal. Ct. App. June 17, 2015), and review of the record.

1 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"),  
2 which applies to all petitions for writ of habeas corpus filed thereafter. *Lindh v. Murphy*, 521  
3 U.S. 320, 322-23 (1997). Under the statutory terms, the petition in this case is governed by  
4 AEDPA's provisions because it was filed after April 24, 1996.

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6 Habeas corpus is neither a substitute for a direct appeal nor a device for federal review of  
7 the merits of a guilty verdict rendered in state court. *Jackson v. Virginia*, 443 U.S. 307, 332 n. 5  
8 (1979) (Stevens, J., concurring). Habeas corpus relief is intended to address only "extreme  
9 malfunctions" in state criminal justice proceedings. *Id.* Under AEDPA, a petitioner can obtain  
10 habeas corpus relief only if he can show that the state court's adjudication of his claim:

11 (1) resulted in a decision that was contrary to, or involved an  
12 unreasonable application of, clearly established Federal law, as determined by  
13 the Supreme Court of the United States; or

14 (2) resulted in a decision that was based on an unreasonable  
15 determination of the facts in light of the evidence presented in the State court  
16 proceeding.

17 28 U.S.C. § 2254(d); *Lockyer v. Andrade*, 538 U.S. 63, 70-71 (2003); *Williams*, 529 U.S. at 413.

18 "By its terms, § 2254(d) bars relitigation of any claim 'adjudicated on the merits' in state  
19 court, subject only to the exceptions set forth in §§ 2254(d)(1) and (d)(2)." *Harrington v.*  
20 *Richter*, 562 U.S. 86, 98 (2011).

21 As a threshold matter, a federal court must first determine what constitutes "clearly  
22 established Federal law, as determined by the Supreme Court of the United States." *Lockyer*,  
23 538 U.S. at 71. In doing so, the Court must look to the holdings, as opposed to the dicta, of the  
24 Supreme Court's decisions at the time of the relevant state-court decision. *Id.* The court must  
25 then consider whether the state court's decision was "contrary to, or involved an unreasonable  
26 application of, clearly established Federal law." *Id.* at 72. The state court need not have cited  
27 clearly established Supreme Court precedent; it is sufficient that neither the reasoning nor the  
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1 result of the state court contradicts it. *Early v. Packer*, 537 U.S. 3, 8 (2002). The federal court  
2 must apply the presumption that state courts know and follow the law. *Woodford v. Visciotti*,  
3 537 U.S. 19, 24 (2002). Petitioner has the burden of establishing that the decision of the state  
4 court is contrary to, or involved an unreasonable application of, United States Supreme Court  
5 precedent. *Baylor v. Estelle*, 94 F.3d 1321, 1325 (9th Cir. 1996).

7 "A federal habeas court may not issue the writ simply because the court concludes in its  
8 independent judgment that the relevant state-court decision applied clearly established federal  
9 law erroneously or incorrectly." *Lockyer*, 538 U.S. at 75-76. "A state court's determination that  
10 a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree'  
11 on the correctness of the state court's decision." *Harrington*, 562 U.S. at 101 (quoting  
12 *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). Thus, the AEDPA standard is difficult to  
13 satisfy since even a strong case for relief does not demonstrate that the state court's determination  
14 was unreasonable. *Harrington*, 562 U.S. at 102.

16 **III. Petitioner Did Not Exhaust His State Remedies on the Ineffective Assistance of**  
17 **Counsel Claim**

18 A petitioner who is in state custody and wishes to collaterally challenge his conviction by  
19 a petition for writ of habeas corpus must exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1).  
20 The exhaustion doctrine is based on comity to the state court and gives the state court the initial  
21 opportunity to correct the state's alleged constitutional deprivations. *Coleman v. Thompson*, 501  
22 U.S. 722, 731 (1991); *Rose v. Lundy*, 455 U.S. 509, 518 (1982); *Buffalo v. Sunn*, 854 F.2d 1158,  
23 1163 (9th Cir. 1988).

24 A petitioner can satisfy the exhaustion requirement by providing the highest state court  
25 with a full and fair opportunity to consider each claim before presenting it to the federal court.  
26 *Duncan v. Henry*, 513 U.S. 364, 365 (1995); *Picard v. Connor*, 404 U.S. 270, 276 (1971);  
27 *Johnson v. Zenon*, 88 F.3d 828, 829 (9th Cir. 1996). A federal court will find that the highest  
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1 state court was given a full and fair opportunity to hear a claim if the petitioner has presented the  
2 highest state court with the claim's factual and legal basis. *Duncan*, 513 U.S. at 365; *Kenney v.*  
3 *Tamayo-Reyes*, 504 U.S. 1, 8 (1992).

4 The petitioner must also have specifically informed the state court that he was raising a  
5 federal constitutional claim. *Duncan*, 513 U.S. at 365-66; *Lyons v. Crawford*, 232 F.3d 666, 669  
6 (9th Cir. 2000), *amended*, 247 F.3d 904 (2001); *Hiivala v. Wood*, 195 F.3d 1098, 1106 (9th Cir.  
7 1999); *Keating v. Hood*, 133 F.3d 1240, 1241 (9th Cir. 1998). If any of grounds for collateral  
8 relief set forth in a petition for habeas corpus are unexhausted, the Court must dismiss the  
9 petition. 28 U.S.C. § 2254(b)(1); *Rose*, 455 U.S. at 521-22.

10 Here, Petitioner does not contend that he presented his ineffective assistance of counsel  
11 claim to the California Supreme Court. Indeed, Petitioner did not articulate a claim in his Petition  
12 for Review before the California Supreme Court, but instead attached documents from the state  
13 court proceedings. (*See* Lodged Doc. 4.) Before the Court of Appeal, Petitioner presented claims  
14 for prosecutorial misconduct and erroneous fines, but did not present his ineffective assistance of  
15 counsel claim. (*See People v. Sanchez*, (No. F067975) (Cal. Ct. App. June 17, 2015).

16 Although non-exhaustion of state court remedies has been viewed as an affirmative  
17 defense, it is established that it is the petitioner's burden to prove that state judicial remedies were  
18 properly exhausted. 28 U.S.C. § 2254(b)(1)(A); *Darr v. Burford*, 339 U.S. 200, 218-19 (1950),  
19 *overruled in part on other grounds in Fay v. Noia*, 372 U.S. 391 (1963); *Cartwright v. Cupp*, 650  
20 F.2d 1103, 1104 (9<sup>th</sup> Cir. 1981). If available state court remedies have not been exhausted as to  
21 all claims, a district court must dismiss a petition. *Rose v. Lundy*, 455 U.S. 509, 515-16 (1982).  
22 *See also Raspberry v. Garcia*, 448 F.3d 1150, 1154 (9<sup>th</sup> Cir. 2006); *Jiminez v. Rice* 276 F.3d 478,  
23 481 (9<sup>th</sup> Cir. 2001) (both holding that when none of a petitioner's claims has been presented to the  
24 highest state court as required by the exhaustion doctrine, the Court must dismiss the petition).

1           Because Petitioner did not exhaust his claim for ineffective assistance of counsel before  
2 the state court, the Court recommends denying the petition for failure to exhaust state court  
3 remedies.

4           **IV. Certificate of Appealability**

5           A petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a  
6 district court's denial of his petition, but may only appeal in certain circumstances. *Miller-El v.*  
7 *Cockrell*, 537 U.S. 322, 335-36 (2003). The controlling statute in determining whether to issue a  
8 certificate of appealability is 28 U.S.C. § 2253, which provides:  
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10                   (a) In a habeas corpus proceeding or a proceeding under section 2255  
11 before a district judge, the final order shall be subject to review, on appeal, by  
12 the court of appeals for the circuit in which the proceeding is held.

13                   (b) There shall be no right of appeal from a final order in a proceeding to  
14 test the validity of a warrant to remove to another district or place for  
15 commitment or trial a person charged with a criminal offense against the United  
16 States, or to test the validity of such person's detention pending removal  
17 proceedings.

18                   (c)       (1) Unless a circuit justice or judge issues a certificate of  
19 appealability, an appeal may not be taken to the court of appeals from—

20                               (A) the final order in a habeas corpus proceeding in which the  
21 detention complained of arises out of process issued by a State court; or

22                               (B) the final order in a proceeding under section 2255.

23                               (2) A certificate of appealability may issue under paragraph (1)  
24 only if the applicant has made a substantial showing of the denial of a  
25 constitutional right.

26                               (3) The certificate of appealability under paragraph (1) shall  
27 indicate which specific issues or issues satisfy the showing required by  
28 paragraph (2).

          If a court denies a habeas petition, the court may only issue a certificate of appealability  
"if jurists of reason could disagree with the district court's resolution of his constitutional claims  
or that jurists could conclude the issues presented are adequate to deserve encouragement to

1 proceed further." *Miller-El*, 537 U.S. at 327; *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).  
2 Although the petitioner is not required to prove the merits of his case, he must demonstrate  
3 "something more than the absence of frivolity or the existence of mere good faith on his . . .  
4 part." *Miller-El*, 537 U.S. at 338.

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6 Reasonable jurists would not find the Court's determination that Petitioner is not entitled  
7 to federal habeas corpus relief debatable, wrong, or deserving of encouragement to proceed  
8 further. Accordingly, the Court should decline to issue a certificate of appealability.

9 **V. Recommendations and Conclusions**

10 Based on the foregoing, the undersigned recommends that the Court dismiss the petition  
11 for writ of habeas corpus without prejudice and decline to issue a certificate of appealability.

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13 These Findings and Recommendations will be submitted to the United States District  
14 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **thirty**  
15 **(30) days** after being served with these Findings and Recommendations, either party may file  
16 written objections with the Court. The document should be captioned "Objections to Magistrate  
17 Judge's Findings and Recommendations. Replies to the objections, if any, shall be served and  
18 filed within **fourteen (14) days** after service of the objections. The parties are advised that  
19 failure to file objections within the specified time may constitute waiver of the right to appeal the  
20 District Court's order. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v.*  
21 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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24 IT IS SO ORDERED.

25 Dated: April 16, 2018

26 /s/ Sheila K. Olerto  
27 UNITED STATES MAGISTRATE JUDGE  
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