

1 A petition for habeas corpus should not be dismissed without leave to amend unless it appears
2 that no tenable claim for relief can be pleaded were such leave to be granted. *Jarvis v. Nelson*,
3 440 F.2d 13, 14 (9th Cir. 1971).

4 **II. Ground One is Not Cognizable in a Federal Habeas Petition**

5 Habeas corpus is the exclusive remedy for a state prisoner who challenges the fact of
6 duration of his confinement and seeks immediate or speedier release. *Reiser v. Rodriguez*, 411
7 U.S. 475, 500 (1973). In general, § 2254 is intended to redress violations of the U.S.
8 Constitution. *Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991).

9 Habeas corpus is neither a substitute for a direct appeal nor a device for federal review of
10 the merits of a guilty verdict rendered in state court. *Jackson v. Virginia*, 443 U.S. 307, 332 n. 5
11 (1979) (Stevens, J., concurring). Habeas corpus relief is intended to address only "extreme
12 malfunctions" in state criminal justice proceedings. *Id.* Under AEDPA, a petitioner can prevail
13 only if he can show that the state court's adjudication of his claim:
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15 (1) resulted in a decision that was contrary to, or involved an unreasonable
16 application of, clearly established Federal law, as determined by the Supreme Court of
17 the United States; or

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

20 28 U.S.C. § 2254(d); *Lockyer v. Andrade*, 538 U.S. 63, 70-71 (2003); *Williams*,
21 529 U.S. at 413.

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

25 Petitioner's sole ground for relief alleges that he was convicted in violation of a
26 statutory prohibition against multiple punishments for a single physical act. Petitioner identifies
27 the statute only as § 654, without specifying a federal or state statutory title. He fails to set
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1 forth any factual basis for this conclusory allegation. As a result, the Court cannot evaluate
2 whether Petitioner's claim meets the requirement of § 2254 of (1) an unreasonable application
3 of, clearly established Federal law, as determined by the Supreme Court of the United States; or
4 (2) resulted in a decision that was based on an unreasonable determination of the facts in light
5 of the evidence presented in the State court proceeding. If Petitioner chooses to amend his
6 petition, as this screening order permits him to do, he must specifically identify the statutory
7 source of the alleged legal violation and briefly, but completely, explain the facts supporting the
8 allegation.
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10 **III. Petition Does Not Allege Exhaustion**

11 A petitioner who is in state custody and wishes to collaterally challenge his conviction by
12 a petition for writ of habeas corpus must first exhaust state judicial remedies. 28 U.S.C. §
13 2254(b)(1). The exhaustion doctrine is based on comity to the state court and gives the state court
14 the initial opportunity to correct the state's alleged constitutional deprivations. *Coleman v.*
15 *Thompson*, 501 U.S. 722, 731 (1991); *Rose v. Lundy*, 455 U.S. 509, 518 (1982); *Buffalo v. Sunn*,
16 854 F.2d 1158, 1163 (9th Cir. 1988).
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18 A petitioner can satisfy the exhaustion requirement by providing the highest state court
19 with a full and fair opportunity to consider each claim before presenting it to the federal court.
20 *Duncan v. Henry*, 513 U.S. 364, 365 (1995); *Picard v. Connor*, 404 U.S. 270, 276 (1971);
21 *Johnson v. Zenon*, 88 F.3d 828, 829 (9th Cir. 1996). A federal court will find that the highest state
22 court was given a full and fair opportunity to hear a claim if the petitioner has presented the
23 highest state court with the claim's factual and legal basis. *Duncan*, 513 U.S. at 365; *Kenney v.*
24 *Tamayo-Reyes*, 504 U.S. 1, 8 (1992).
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26 The petition alleges that Petitioner appealed his conviction to the California Court of
27 Appeal, but does not allege that Petitioner also appealed the conviction to the California Supreme
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1 Court. If the California Supreme Court has not reviewed Petitioner's claim, Petitioner has not
2 exhausted state remedies, and the Court must dismiss the petition. If Petitioner has pursued his
3 claim to the California Supreme Court, the amended petition should disclose the relevant
4 information requested at paragraph 9(e) of the petition form.

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6 **IV. Conclusion and Order**

7 Accordingly, the Court hereby ORDERS:

8 1. The petition for writ of habeas corpus is hereby
9 DISMISSED with leave to amend.

10 2. The Clerk of Court shall send Petitioner a copy of this order
11 and a form for a Petition under 28 U.S.C. § 2254 for Writ of Habeas
12 Corpus by a Person in State Custody.

13 3. Within 30 days of this order, Petitioner shall file an
14 amended petition correcting the deficiencies noted in this order.
15 Petitioner shall sign the petition under penalty of perjury where
16 indicated.

17 4. If Petitioner fails to file an amended petition within thirty
18 (30) days from the date of this order, the case will be dismissed
19 without further notice for lack of prosecution.

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IT IS SO ORDERED.

Dated: March 23, 2017

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE