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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MELVIN DUKES,

Petitioner,

v.

CHRISTIAN PFEIFFER,

Respondent.

Case No. 1:17-cv-00469-DAD-EPG-HC

FINDINGS AND RECOMMENDATION TO
DISMISS PETITION FOR WRIT OF
HABEAS CORPUS

Petitioner is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Given that the instant petition contains unexhausted claims and Petitioner has failed to obey a court order, the undersigned recommends dismissal of the petition.

I.

BACKGROUND

On April 3, 2017, Petitioner filed the instant federal habeas petition. (ECF No. 1). On April 6, 2017, the Court ordered Petitioner to show cause why the petition should not be dismissed for failure to exhaust state court remedies and for failure to state cognizable federal habeas claims. (ECF No. 4). To date, Petitioner has failed to file a response, and the time for doing so has passed.¹

¹ The order to show cause was returned as undeliverable because Petitioner refused delivery. The Court mailed the order to show cause a second time, and the order again was returned as undeliverable because it was refused.

1 **II.**

2 **DISCUSSION**

3 Rule 4 of the Rules Governing Section 2254 Cases requires preliminary review of a
4 habeas petition and allows a district court to dismiss a petition before the respondent is ordered
5 to file a response, if it “plainly appears from the petition and any attached exhibits that the
6 petitioner is not entitled to relief in the district court.” Rule 4, Rules Governing Section 2254
7 Cases.

8 **A. Exhaustion**

9 A petitioner in state custody who is proceeding with a petition for writ of habeas corpus
10 must exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1). The exhaustion doctrine is based
11 on comity to the state court and gives the state court the initial opportunity to correct the state’s
12 alleged constitutional deprivations. Coleman v. Thompson, 501 U.S. 722, 731 (1991); Rose v.
13 Lundy, 455 U.S. 509, 518 (1982). A petitioner can satisfy the exhaustion requirement by
14 providing the highest state court with a full and fair opportunity to consider each claim before
15 presenting it to the federal court. O’Sullivan v. Boerckel, 526 U.S. 838, 845 (1999); Duncan v.
16 Henry, 513 U.S. 364, 365 (1995); Picard v. Connor, 404 U.S. 270, 276 (1971).

17 It does not appear that Petitioner has presented his claims to the California Supreme
18 Court. (ECF No. 1 at 12, 14).² It is possible that Petitioner has presented all of his claims to the
19 California Supreme Court and failed to indicate this to the Court. However, as Petitioner has not
20 responded to the order to show cause, it appears that Petitioner failed to exhaust his claims in the
21 instant petition. If Petitioner has not sought relief in the California Supreme Court for the claims
22 that he raises in the instant petition, the Court cannot proceed to the merits of those claims. 28
23 U.S.C. § 2254(b)(1).

24 **B. Failure to Obey Court Order**

25 Pursuant to Federal Rule of Civil Procedure 41(b), a district court may dismiss an action
26 for failure to prosecute, failure to comply with the Federal Rules of Civil Procedure, or failure to
27 comply with the court’s orders. See, e.g., Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991)

28 ² Page numbers refer to the ECF page numbers stamped at the top of the page.

1 (recognizing federal court’s inherent power to “act sua sponte to dismiss a suit for failure to
2 prosecute”); Hells Canyon Preservation Council v. U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir.
3 2005) (recognizing that courts may dismiss an action pursuant to Federal Rule of Civil Procedure
4 41(b) sua sponte for a plaintiff’s failure to prosecute or comply with the rules of civil procedure
5 or the court’s orders). Local Rule 110 provides that a “[f]ailure of counsel or of a party to
6 comply with these Rules or with any order of the Court may be grounds for the imposition by the
7 Court of any and all sanctions . . . within the inherent power of the Court.” District courts have
8 the inherent power to control their dockets and “in the exercise of that power, they may impose
9 sanctions including, where appropriate . . . dismissal of a case.” Thompson v. Housing Auth.,
10 782 F.2d 829, 831 (9th Cir. 1986).

11 In determining whether to dismiss an action under Rule 41(b), the court must consider
12 several factors: “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s
13 need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
14 favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives.”
15 Omstead v. Dell, Inc., 594 F.3d 1081, 1084 (9th Cir. 2010) (quoting Henderson v. Duncan, 779
16 F.2d 1421, 1423 (9th Cir. 1986)).

17 In the instant case, the Court finds that the public’s interest in expeditiously resolving this
18 litigation and the Court’s interest in managing the docket weigh in favor of dismissal, because
19 Petitioner has refused delivery of court documents on three different occasions and the Court
20 cannot hold this case in abeyance indefinitely awaiting compliance by Petitioner. The third
21 factor, risk of prejudice to Respondent, also weighs in favor of dismissal, since a presumption of
22 injury arises from the occurrence of unreasonable delay in prosecuting an action. See Anderson
23 v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor, public policy favoring
24 disposition of cases on their merits, is outweighed by the factors in favor of dismissal. Finally, as
25 the Court’s order had informed Petitioner that failure to comply with the order would result in
26 dismissal of the petition, the Court finds that there are no feasible less drastic alternatives. See In
27 re Phenylpropanolamine (PPA) Prod. Liab. Litig., 460 F.3d 1217, 1229 (9th Cir. 2006)
28 (“Warning that failure to obey a court order will result in dismissal can itself meet the

1 ‘consideration of alternatives’ requirement.”) (citations omitted). Therefore, dismissal is
2 appropriate.

3 **III.**

4 **RECOMMENDATION**

5 Accordingly, IT IS HEREBY RECOMMENDED that the petition for writ of habeas
6 corpus be DISMISSED WITHOUT PREJUDICE for nonexhaustion and failure to obey the
7 Court’s orders.

8 This Findings and Recommendation is submitted to the assigned United States District
9 Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local
10 Rules of Practice for the United States District Court, Eastern District of California. Within
11 **THIRTY (30) days** after service of the Findings and Recommendation, Petitioner may file
12 written objections with the court and serve a copy on all parties. Such a document should be
13 captioned “Objections to Magistrate Judge’s Findings and Recommendation.” The assigned
14 United States District Court Judge will then review the Magistrate Judge’s ruling pursuant to 28
15 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within the specified
16 time may waive the right to appeal the District Court’s order. Wilkerson v. Wheeler, 772 F.3d
17 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

18 IT IS SO ORDERED.

19 Dated: May 30, 2017

20 /s/ Eric P. Gray
21 UNITED STATES MAGISTRATE JUDGE
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