

1 answer to the petition has been filed.

2 B. Failure to State a Cognizable Federal Claim

3 The basic scope of habeas corpus is prescribed by statute. Title 28 U.S.C. § 2254(a) states:

4 The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain
5 an application for a writ of habeas corpus in behalf of a person in custody pursuant to a
6 judgment of a State court *only on the ground that he is in custody in violation of the
7 Constitution or laws or treaties of the United States.*

7 (emphasis added). See also Rule 1 to the Rules Governing Section 2254 Cases in the United States
8 District Court. The Supreme Court has held that “the essence of habeas corpus is an attack by a
9 person in custody upon the legality of that custody . . .” Preiser v. Rodriguez, 411 U.S. 475, 484
10 (1973).

11 In order to succeed in a petition pursuant to 28 U.S.C. § 2254, Petitioner must demonstrate that
12 the adjudication of his claim in state court

13 (1) resulted in a decision that was contrary to, or involved an unreasonable application
14 of, clearly established Federal law, as determined by the Supreme Court of the United
15 States; or (2) resulted in a decision that was based on an unreasonable determination of
16 the facts in light of the evidence presented in the State court proceeding.

16 28 U.S.C. § 2254(d)(1),(2).

17 In addition to the above, Rule 2(c) of the Rules Governing Section 2254 Cases requires that the
18 petition:

- 19 (1) Specify all the grounds for relief available to the petitioner;
20 (2) State the facts supporting each ground;
21 (3) State the relief requested;
22 (4) Be printed, typewritten, or legibly handwritten; and
23 (5) Be signed under penalty of perjury by the petitioner or by a person authorized to sign it for
24 the petitioner under 28 U.S.C. § 2242.

23 In this case, Petitioner complains that he was found guilty of an RVR 115 for “manipulation of
24 staff.” (Pet. at 5.) He presents one claim: “The 115 disciplinary report is false and was based on
25 faulty unreliable evidence.” (Pet. at 5.) He states the report notes he went to suicide watch to avoid a
26 115 but he was genuinely feeling suicidal. He asks that the 115 be expunged from his file.

27 Based on these statements and the rest of the petition, the Court cannot discern a cognizable
28 claim. Petitioner’s sole claim is entirely conclusory. He fails to provide any details of the Rules

1 Violation Report. He directs the Court’s attention to an “attached report,” but no report is attached.
2 He provides no further supporting facts, nor does he allege how the state court’s decision was contrary
3 to, or involved an unreasonable application of, clearly established Federal law, or resulted in a
4 decision that was based on an unreasonable determination of the facts. He does not state how the
5 outcome of the Rules Violation Report affects the length or duration of his sentence other than a
6 speculative claim that it places a heavy burden on parole eligibility, which is not in itself a cognizable
7 claim. Nettles v. Grounds, 830 F.3d 922, 927 (9th Cir. 2016). Petitioner thus fails to state a
8 cognizable claim. The petition will be dismissed and Petitioner will be directed to file an amended
9 petition curing these deficiencies if he can do so.

10 C. Failure to Exhaust State Remedies

11 A petitioner who is in state custody proceeding with a petition for writ of habeas corpus must
12 exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1). The exhaustion doctrine is based on comity
13 to the state court and gives the state court the initial opportunity to correct the state's alleged
14 constitutional deprivations. Coleman v. Thompson, 501 U.S. 722, 731 (1991); Rose v. Lundy, 455
15 U.S. 509, 518 (1982).

16 A petitioner can satisfy the exhaustion requirement by providing the highest state court with a
17 full and fair opportunity to consider each claim before presenting it to the federal court. Duncan v.
18 Henry, 513 U.S. 364, 365 (1995). A federal court will find that the highest state court was given a full
19 and fair opportunity to hear a claim if the petitioner has presented the highest state court with the
20 claim's factual and legal basis. Duncan, 513 U.S. at 365 (legal basis); Kenney v. Tamayo-Reyes, 504
21 U.S. 1 (1992) (factual basis).

22 Additionally, the petitioner must have specifically told the state court that he was raising a
23 federal constitutional claim. Duncan, 513 U.S. at 365-66. In Duncan, the United States Supreme
24 Court reiterated the rule as follows:

25 In Picard v. Connor, 404 U.S. 270, 275 . . . (1971), we said that exhaustion of state
26 remedies requires that petitioners “fairly presen[t]” federal claims to the state courts in
27 order to give the State the “opportunity to pass upon and correct alleged violations of
28 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

1 ruling at a state court trial denied him the due process of law guaranteed by the
2 Fourteenth Amendment, he must say so, not only in federal court, but in state court.

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

4 Our rule is that a state prisoner has not “fairly presented” (and thus exhausted) his
5 federal claims in state court unless he specifically indicated to that court that those
6 claims were based on federal law. See Shumway v. Payne, 223 F.3d 982, 987-88 (9th
7 Cir. 2000). Since the Supreme Court’s decision in Duncan, this court has held that the
8 petitioner must make the federal basis of the claim explicit either by citing federal law
9 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. Hiiivala v.
Wood, 195 F3d 1098, 1106-07 (9th Cir. 1999); Johnson v. Zenon, 88 F.3d 828, 830-31
(9th Cir. 1996);

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

13 Lyons v. Crawford, 232 F.3d 666, 668-669 (9th Cir. 2000), *as amended by* Lyons v. Crawford, 247
14 F.3d 904, 904-5 (9th Cir. 2001).

15 In this case, it appears that Petitioner has failed to present any of his claims to the state courts.
16 If Petitioner has not first sought relief in the state courts, the petition must be dismissed. 28 U.S.C. §
17 2254(b). It is possible Petitioner has exhausted his state remedies but neglected to inform the Court.
18 He will be given an opportunity to demonstrate exhaustion in an amended petition.

19 D. Amended Petition

20 Petitioner will be granted an opportunity to file a First Amended Petition curing the above
21 deficiencies. Petitioner is advised that he should entitle his pleading, “First Amended Petition,” and he
22 should reference the instant case number. Failure to comply with this order will result in dismissal of
23 the action.

24 **II. ORDER**

25 Accordingly, the Court **ORDERS**:

- 26 1) The Petition for Writ of Habeas Corpus is DISMISSED WITHOUT PREJUDICE for
27 failure to state a claim; and
28 2) Petitioner is GRANTED thirty days from the date of service of this order to file a First

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Amended Petition.

IT IS SO ORDERED.

Dated: August 9, 2017

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE