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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GARY DALE BARGER
aka GARY FRANCIS FISHER,

Petitioner,

v.

DIRECTOR OF OPERATIONS OF CDCR,

Respondent.

Case No. 1:17-cv-01067-SAB-HC

ORDER TO SHOW CAUSE

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner alleges that the California Department of Corrections and Rehabilitation is using false information regarding a second strike to extend Petitioner’s release date.

I.

DISCUSSION

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

A petitioner in state custody who is proceeding with a petition for writ of habeas corpus must exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1). The exhaustion doctrine is based

1 on comity to the state court and gives the state court the initial opportunity to correct the state's
2 alleged constitutional deprivations. Coleman v. Thompson, 501 U.S. 722, 731 (1991); Rose v.
3 Lundy, 455 U.S. 509, 518 (1982). A petitioner can satisfy the exhaustion requirement by
4 providing the highest state court with a full and fair opportunity to consider each claim before
5 presenting it to the federal court. O'Sullivan v. Boerckel, 526 U.S. 838, 845 (1999); Duncan v.
6 Henry, 513 U.S. 364, 365 (1995); Picard v. Connor, 404 U.S. 270, 276 (1971).

7 Here, there is no indication whether Petitioner has raised his claims in the California
8 Supreme Court. If Petitioner has not sought relief in the California Supreme Court, this Court
9 cannot proceed to the merits of his claims. 28 U.S.C. § 2254(b)(1). It is possible, however, that
10 Petitioner has presented all of his claims to the California Supreme Court and failed to indicate
11 this to the Court. Thus, Petitioner must inform the Court whether each of his claims has been
12 presented to the California Supreme Court, and if possible, provide the Court with a copy of the
13 petition filed in the California Supreme Court that includes the claims now presented and a file
14 stamp showing that the petition was indeed filed in the California Supreme Court.

15 **II.**

16 **ORDER**

17 Accordingly, IT IS HEREBY ORDERED that Petitioner is ORDERED to SHOW
18 CAUSE within **THIRTY (30) days** from the date of service of this order why the petition should
19 not be dismissed for failure to exhaust state court remedies.

20 Petitioner is forewarned that failure to follow this order may result in dismissal of the
21 petition pursuant to Federal Rule of Civil Procedure 41(b) (a petitioner's failure to prosecute or
22 to comply with a court order may result in a dismissal of the action).

23 IT IS SO ORDERED.

24 Dated: August 17, 2017

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26 _____
27 UNITED STATES MAGISTRATE JUDGE
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