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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAMES D. CHAVEZ,

Petitioner,

v.

WARDEN,

Respondent.

Case No. 1:17-cv-01202- EPG-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 wherein he challenges a rules violation report for fighting. Petitioner has consented to the jurisdiction of the United States Magistrate Judge. (ECF No. 5).

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 on comity to the state court and gives the state court the initial opportunity to correct the state’s alleged constitutional deprivations.

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

6 If Petitioner has not sought relief in the California Supreme Court for the claims that he
7 raises in the instant petition, the Court cannot proceed to the merits of those claims. 28 U.S.C.
8 § 2254(b)(1). Here, although Petitioner has sought all levels of administrative appeal, it appears
9 that Petitioner has not presented any of his claims to the state court. (ECF No. 1 at 5–6).¹ It is
10 possible, however, that Petitioner has presented his claims to the California Supreme Court and
11 failed to indicate this to the Court. Thus, Petitioner must inform the Court whether his claims
12 have been presented to the California Supreme Court, and if possible, provide the Court with a
13 copy of the petition filed in the California Supreme Court that includes the claims now presented
14 and a file 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 shall show cause why the
18 petition should not be dismissed for failure to exhaust state court remedies within **THIRTY (30)**
19 **days** from the date of service of this order.

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

25 Dated: September 26, 2017

25 /s/ Eric P. Gray
26 UNITED STATES MAGISTRATE JUDGE

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28 ¹ Page numbers refer to the ECF page numbers stamped at the top of the page.