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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DEONTRAY THOMAS,
Petitioner,

v.

PEOPLE OF THE STATE OF
CALIFORNIA,
Respondent.

Case No. 1:17-cv-01546-SKO HC

ORDER DISMISSING PETITION
FOR WRIT OF HABEAS CORPUS
WITH LEAVE TO AMEND

(Doc. 1)

SCREENING ORDER

Petitioner, a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254,¹ filed his petition on a state habeas corpus form. The petition seeks review of a decision of the California state trial court.

I. Preliminary Screening

Rule 4 of the Rules Governing § 2254 Cases requires the Court to conduct a preliminary review of each petition for writ of habeas corpus. The Court must dismiss a petition "[i]f it plainly appears from the petition . . . that the petitioner is not entitled to relief." Rule 4 of the Rules Governing 2254 Cases; *see also Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990). A petition for habeas corpus should not be dismissed without leave to amend unless it appears that no

¹ Pursuant to 28 U.S.C. § 636(c)(1), Petitioner consented, in writing, to the jurisdiction of a United States Magistrate Judge to conduct all further proceedings in this case, including the entry of final judgment.

1 tenable claim for relief can be pleaded were such leave to be granted. *Jarvis v. Nelson*, 440 F.2d 13,
2 14 (9th Cir. 1971).

3 **II. Procedural and Factual Background**

4 Petitioner filed his petition on November 13, 2017, but did not include any of the factual and
5 procedural background of his case. If Petitioner elects to amend his petition, as this order permits
6 him to do, he must set forth the factual and procedural history in a brief, clear, and simple manner,
7 using the form of petition for habeas corpus pursuant to 28 U.S.C. § 2254, which the Clerk of Court
8 will forward to him with his copy of this order.
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10 **III. Standard of Review**

11 Habeas corpus is neither a substitute for a direct appeal nor a device for federal review of the
12 merits of a guilty verdict rendered in state court. *Jackson v. Virginia*, 443 U.S. 307, 332 n. 5 (1979)
13 (Stevens, J., concurring). Habeas corpus relief is intended to address only "extreme malfunctions" in
14 state criminal justice proceedings. *Id.*

15 Because the petition was filed after April 24, 1996, the effective date of the Antiterrorism
16 and Effective Death Penalty Act of 1996 (AEDPA), the Court must apply its provisions. *Lindh v.*
17 *Murphy*, 521 U.S. 320, 327 (1997); *Jeffries v. Wood*, 114 F.3d 1484, 1499 (9th Cir. 1997), *overruled*
18 *on other grounds by Gonzalez v. Arizona*, 677 F.3d 383 (9th Cir. 2012). Under AEDPA, a petitioner
19 can prevail only if he can show that the state court's adjudication of his claim:
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21 (1) resulted in a decision that was contrary to, or involved an unreasonable
22 application of, clearly established Federal law, as determined by the Supreme
23 Court of the United States; or

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

26 28 U.S.C. § 2254(d); *Lockyer v. Andrade*, 538 U.S. 63, 70-71 (2003); *Williams v. Taylor*,
27 529 U.S. 362, 413 (2000).

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1 "By its terms, § 2254(d) bars relitigation of any claim 'adjudicated on the merits' in state
2 court, subject only to the exceptions set forth in §§ 2254(d)(1) and (d)(2)." *Harrington v. Richter*,
3 562 U.S. 86, 98 (2011).

4 As a threshold matter, a federal court must first determine what constitutes "clearly
5 established Federal law, as determined by the Supreme Court of the United States." *Lockyer*, 538
6 U.S. at 71. To do so, the Court must look to the holdings, as opposed to the dicta, of the Supreme
7 Court's decisions at the time of the relevant state-court decision. *Id.* The court must then consider
8 whether the state court's decision was "contrary to, or involved an unreasonable application of,
9 clearly established Federal law." *Id.* at 72. The state court need not have cited clearly established
10 Supreme Court precedent; it is sufficient that neither the reasoning nor the result of the state court
11 contradicts it. *Early v. Packer*, 537 U.S. 3, 8 (2002). The federal court must apply the presumption
12 that state courts know and follow the law. *Woodford v. Visciotti*, 537 U.S. 19, 24 (2002). The
13 petitioner has the burden of establishing that the decision of the state court is contrary to, or involved
14 an unreasonable application of, United States Supreme Court precedent. *Baylor v. Estelle*, 94 F.3d
15 1321, 1325 (9th Cir. 1996).

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18 The AEDPA standard is difficult to satisfy since even a strong case for relief does not
19 demonstrate that the state court's determination was unreasonable. *Harrington*, 562 U.S. at 102. "A
20 federal habeas court may not issue the writ simply because the court concludes in its independent
21 judgment that the relevant state-court decision applied clearly established federal law erroneously or
22 incorrectly." *Lockyer*, 538 U.S. at 75-76. "A state court's determination that a claim lacks merit
23 precludes federal habeas relief so long as 'fairminded jurists could disagree' on the correctness of the
24 state court's decision." *Harrington*, 562 U.S. at 101 (quoting *Yarborough v. Alvarado*, 541 U.S. 652,
25 664 (2004)). Put another way, a federal court may grant habeas relief only when the state court's
26 application of Supreme Court precedent was objectively unreasonable and no fair-minded jurist
27 could disagree that the state court's decision conflicted with Supreme Court's precedent. *Williams*,

1 529 U.S. at 411.

2 **IV. Appropriate Respondent**

3 Petitioner names the State of California as the Respondent, which is not a proper respondent
4 in a federal habeas action. A petitioner who is seeking habeas corpus relief under 28 U.S.C. § 2254
5 must name as the respondent only the state officer having custody of him as the respondent to the
6 petition. Habeas Rule 2(a); *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996); *Stanley v.*
7 *California Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). Generally, the person having custody
8 of an incarcerated petitioner is the warden of the prison in which the petitioner is incarcerated
9 because the warden has “day-to-day control over” the petitioner and thus can produce the petitioner.
10 *Brittingham v. United States*, 982 F.2d 378, 379 (9th Cir. 1992). The chief officer in charge of state
11 penal institutions, such as the Secretary of the CDCR, is also appropriate. *Ortiz-Sandoval*, 81 F.3d
12 at 894; *Stanley*, 21 F.3d at 360.

14 **V. California State Law Claims**

15 Although Petitioner’s claim is unclear, to the extent he is alleging a California state law
16 claim, federal habeas relief is available to state prisoners only to correct violations of the United
17 States Constitutions, federal laws, or treaties of the United States. 28 U.S.C. § 2254(a). “[F]ederal
18 habeas corpus relief does not lie for errors of state law.” *Wilson v. Corcoran*, 562 U.S. 1, 5 (2010);
19 *Estelle v. McGuire*, 502 U.S. 62, 67 (1991); *Lewis v. Jeffers*, 497 U.S. 764, 780 (1990). Re-
20 examining state-court determinations of state-law questions is not the business of federal courts.
21 *Wilson*, 562 U.S. at 5. In reviewing a federal habeas petition, a federal district court accepts a state
22 court's interpretation of that state's law. *Langford v. Day*, 110 F.3d 1380, 1389 (9th Cir. 1996).
23 Accordingly, the amended habeas petition must set forth only those claims alleging violations of
24 Petitioner's constitutional rights. An example of a state-law claim includes a claim for the violation
25 of the California penal code.
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1 **VI. Exhaustion of State Remedies**

2 It is not clear from the petition whether Petitioner has exhausted the claim he has alleged. A
3 petitioner who is in state custody and wishes to collaterally challenge his conviction by a petition for
4 writ of habeas corpus must exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1). The exhaustion
5 doctrine is based on comity to the state court and gives the state court the initial opportunity to
6 correct the state's alleged constitutional deprivations. *Coleman v. Thompson*, 501 U.S. 722, 731
7 (1991); *Rose v. Lundy*, 455 U.S. 509, 518 (1982); *Buffalo v. Sunn*, 854 F.2d 1158, 1163 (9th Cir.
8 1988).

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10 A petitioner can satisfy the exhaustion requirement by providing the highest state court with
11 a full and fair opportunity to consider each claim before presenting it to the federal court. *Duncan v.*
12 *Henry*, 513 U.S. 364, 365 (1995); *Picard v. Connor*, 404 U.S. 270, 276 (1971); *Johnson v. Zenon*, 88
13 F.3d 828, 829 (9th Cir. 1996). A federal court will find that the highest state court was given a full
14 and fair opportunity to hear a claim if the petitioner has presented the highest state court with the
15 claim's factual and legal basis. *Duncan*, 513 U.S. at 365; *Kenney v. Tamayo-Reyes*, 504 U.S. 1, 8
16 (1992).

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18 The petitioner must also have specifically informed the state court that he was raising a
19 federal constitutional claim. *Duncan*, 513 U.S. at 365-66; *Lyons v. Crawford*, 232 F.3d 666, 669 (9th
20 Cir. 2000), *amended*, 247 F.3d 904 (2001); *Hiivala v. Wood*, 195 F.3d 1098, 1106 (9th Cir. 1999);
21 *Keating v. Hood*, 133 F.3d 1240, 1241 (9th Cir. 1998). If any of grounds for collateral relief set forth
22 in a petition for habeas corpus are unexhausted, the Court must dismiss the petition. 28 U.S.C.
23 § 2254(b)(1); *Rose*, 455 U.S. at 521-22.

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25 **VIII. Conclusion and Order**

26 The Court hereby ORDERS:

- 27 1. The petition for writ of habeas corpus shall be dismissed with leave to amend.
- 28 2. The Clerk's Office shall send Petitioner a copy of this order and a form for a "Petition

under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody.”

3. Within thirty (30) days of service of this order, Petitioner may file an amended petition. Petitioner shall name as respondent the warden of the institution in which he is incarcerated. Petitioner shall fully complete the form for the amended petition, including all claims and the facts supporting each claim.
4. If Plaintiff fails to file an amended petition within thirty (30) days from the date of service of this order, the Court will recommend the action be dismissed, with prejudice, for failure to obey a court order.

IT IS SO ORDERED.

Dated: December 4, 2017

/s/ Sheila K. Obero
UNITED STATES MAGISTRATE JUDGE