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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

VESTER L. PATTERSON,)	Case No.: 1:18-cv-00038-JLT (HC)
)	
Petitioner,)	ORDER DISMISSING PETITION WITH LEAVE
)	TO FILE A FIRST AMENDED PETITION
v.)	
)	ORDER DIRECTING CLERK OF COURT TO
)	PROVIDE PETITIONER BLANK HABEAS
WILLIAM J. SULLIVAN, Warden,)	CORPUS FORM PETITION
)	
Respondent.)	[THIRTY DAY DEADLINE]

Petitioner filed the instant federal habeas petition in this Court on January 8, 2018. A preliminary screening of the petition reveals that the petition is deficient in several respects. Therefore, the Court will **DISMISS** the petition with leave to file an amended petition.

I. DISCUSSION

A. Preliminary Review of Petition

Rule 4 of the Rules Governing Section 2254 Cases requires the Court to make a preliminary review of each petition for writ of habeas corpus. The Court must summarily dismiss a petition “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court” Rule 4; O’Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990). The Advisory Committee Notes to Rule 8 indicate that the Court may dismiss a petition for writ of habeas corpus, either on its own motion under Rule 4, pursuant to the respondent’s motion to dismiss, or after an

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 Petitioner has failed to comply with § 2254 and Rule 2(c) by failing to adequately set forth his
24 grounds for relief. He further fails to state how the adjudication of his claim(s) in state court resulted
25 in a decision that was contrary to, or an unreasonable application of, clearly established Supreme
26 Court precedent, or resulted in a decision that was based on an unreasonable determination of the
27 facts.

28 Petitioner states he is in custody pursuant to a state court judgment for conviction of oral

1 copulation by force and rape. He fails to state which state court entered judgment; therefore, the Court
2 cannot determine whether the venue is proper. He also fails to sufficiently set forth the sentence. He
3 states his convictions carry a prescribed statutory maximum punishment of 8 years; however, he does
4 not indicate what his actual sentence was. He claims he has served the prescribed sentence and is now
5 being held unlawfully based on a “void portion of the judgment.” He fails to explain what he means
6 by “void portion of the judgment.” For the foregoing reasons, Petitioner fails to state a cognizable
7 claim for relief. Before dismissal is recommended, the Court will provide Petitioner an opportunity to
8 file an amended petition to cure these defects.

9 C. Exhaustion of State Remedies

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

15 A petitioner can satisfy the exhaustion requirement by providing the highest state court with a
16 full and fair opportunity to consider each claim before presenting it to the federal court. Duncan v.
17 Henry, 513 U.S. 364, 365 (1995). A federal court will find that the highest state court was given a full
18 and fair opportunity to hear a claim if the petitioner has presented the highest state court with the
19 claim's factual and legal basis. Duncan, 513 U.S. at 365 (legal basis); Kenney v. Tamayo-Reyes, 504
20 U.S. 1, 112 S.Ct. 1715, 1719 (1992) (factual basis).

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

24 In Picard v. Connor, 404 U.S. 270, 275 . . . (1971), we said that exhaustion of state
25 remedies requires that petitioners “fairly presen[t]” federal claims to the state courts in
26 order to give the State the “opportunity to pass upon and correct alleged violations of
27 the prisoners' federal rights” (some internal quotation marks omitted). If state courts
28 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
ruling at a state court trial denied him the due process of law guaranteed by the
Fourteenth Amendment, he must say so, not only in federal court, but in state court.

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

2 Our rule is that a state prisoner has not “fairly presented” (and thus exhausted) his
3 federal claims in state court unless he specifically indicated to that court that those
4 claims were based on federal law. See Shumway v. Payne, 223 F.3d 982, 987-88 (9th
5 Cir. 2000). Since the Supreme Court's decision in Duncan, this court has held that the
6 petitioner must make the federal basis of the claim explicit either by citing federal law
7 or the decisions of federal courts, even if the federal basis is “self-evident,” Gatlin v.
8 Madding, 189 F.3d 882, 889 (9th Cir. 1999) (citing Anderson v. Harless, 459 U.S. 4, 7 .
9 . . (1982), or the underlying claim would be decided under state law on the same
10 considerations that would control resolution of the claim on federal grounds. Hiivala v.
11 Wood, 195 F3d 1098, 1106-07 (9th Cir. 1999); Johnson v. Zenon, 88 F.3d 828, 830-31
12 (9th Cir. 1996);

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

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

19 Petitioner fails to indicate whether he has sought relief in the state courts. If he has not, the
20 Court must dismiss the petition. Raspberry v. Garcia, 448 F.3d 1150, 1154 (9th Cir. 2006); Jiminez v.
21 Rice, 276 F.3d 478, 481 (9th Cir. 2001). The Court cannot consider a petition that is entirely
22 unexhausted. Rose v. Lundy, 455 U.S. 509, 521-22 (1982). If he has fully exhausted his claims, he
23 must so indicate in his amended petition.

24 Petitioner will be granted an opportunity to file a First Amended Petition curing the foregoing
25 deficiencies. Petitioner is advised that he should entitle his pleading, “First Amended Petition,” he
26 should reference the instant case number, and he should complete the blank habeas corpus form
27 provided by the Clerk of Court. Petitioner is forewarned that failure to comply with this order will
28 result in dismissal of the action.

29 **III. ORDER**

30 Accordingly, the Court **ORDERS**:

- 31 1) The Petition for Writ of Habeas Corpus is DISMISSED WITHOUT PREJUDICE for
32 failure to state a claim and failure to exhaust;
- 33 2) Petitioner is GRANTED thirty days from the date of service of this order to file a First
34 Amended Petition; and

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3) The Clerk of Court is DIRECTED to provide Petitioner a blank form habeas petition.

IT IS SO ORDERED.

Dated: January 11, 2018

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE