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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SARON GREEN,
Petitioner,
v.
ON HABEAS CORPUS,
Respondent.

Case No. 1:18-cv-00223-MJS (HC)

**ORDER TO SHOW CAUSE WHY THE
PETITION SHOULD NOT BE DISMISSED
FOR PETITIONER'S FAILURE TO
EXHAUST STATE COURT REMEDIES**

THIRTY (30) DAY DEADLINE

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges the May 15, 2013 judgement of the Kern County Superior Court. (ECF No. 1 at 1.) He raises four grounds for relief and states that none of the grounds have been presented to the California Supreme Court.

I. Discussion

Rule 4 of the Rules Governing § 2254 Cases requires the Court to make 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; Hendricks v. Vasquez, 908 F.2d 490 (9th Cir. 1990). Otherwise, the Court will order Respondent to respond to the

1 petition. Rule 5 of the Rules Governing § 2254 Cases.

2 A petitioner who is in state custody and wishes to collaterally challenge his
3 conviction by a petition for writ of habeas corpus must exhaust state judicial remedies.
4 28 U.S.C. § 2254(b)(1). The exhaustion doctrine is based on comity to the state court
5 and gives the state court the initial opportunity to correct the state's alleged constitutional
6 deprivations. Coleman v. Thompson, 501 U.S. 722, 731 (1991); Rose v. Lundy, 455 U.S.
7 509, 518 (1982); Buffalo v. Sunn, 854 F.2d 1158, 1163 (9th Cir. 1988).

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

16 Additionally, the petitioner must have specifically told the state court that he was
17 raising a federal constitutional claim. Duncan, 513 U.S. at 365-66; Lyons v. Crawford,
18 232 F.3d 666, 669 (9th Cir.2000), amended, 247 F.3d 904 (2001); Hiivala v. Wood, 195
19 F.3d 1098, 1106 (9th Cir.1999); Keating v. Hood, 133 F.3d 1240, 1241 (9th Cir.1998). In
20 Duncan, the United States Supreme Court reiterated the rule as follows:

21 In Picard v. Connor, 404 U.S. 270, 275 . . . (1971), we said that
22 exhaustion of state remedies requires that petitioners "fairly present"
23 federal claims to the state courts in order to give the State the
24 "'opportunity to pass upon and correct' alleged violations of the prisoners'
25 federal rights" (some internal quotation marks omitted). If state courts are
26 to be given the opportunity to correct alleged violations of prisoners'
27 federal rights, they must surely be alerted to the fact that the prisoners are
28 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.

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

1 Our rule is that a state prisoner has not "fairly presented" (and thus
2 exhausted) his federal claims in state court unless he specifically indicated
3 to that court that those claims were based on federal law. See Shumway
4 v. Payne, 223 F.3d 982, 987-88 (9th Cir. 2000). Since the Supreme
5 Court's decision in Duncan, this court has held that the petitioner must
6 make the federal basis of the claim explicit either by citing federal law or
7 the decisions of federal courts, even if the federal basis is "self-evident,"
8 Gatlin v. Madding, 189 F.3d 882, 889 (9th Cir. 1999) (citing Anderson v.
9 Harless, 459 U.S. 4, 7 . . . (1982), or the underlying claim would be
10 decided under state law on the same considerations that would control
11 resolution of the claim on federal grounds. Hiivala v. Wood, 195 F3d 1098,
12 1106-07 (9th Cir. 1999); Johnson v. Zenon, 88 F.3d 828, 830-31 (9th Cir.
13 1996);

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

18 Lyons v. Crawford, 232 F.3d 666, 668-669 (9th Cir. 2000).

19 The instant petition for writ of habeas corpus reflects that Petitioner has not
20 presented his claims to the highest state court, the California Supreme Court. He states
21 that he was advised by an attorney that his claims must be presented in a petition for writ
22 of habeas corpus. However, this court cannot proceed to the merits of the petition unless
23 the claims have first been presented to the California Supreme Court, whether on direct
24 appeal or by way of a petition for writ of habeas corpus.

25 If Petitioner has, in fact, presented his claims to the California Supreme Court, he
26 must so advise this Court and, if possible, provide this Court with a copy of the petition
27 filed in the California Supreme Court along with any ruling thereon. Without information
28 to suggest that the claims have been presented to the California Supreme Court, the
Court is unable to proceed to the merits of the petition. 28 U.S.C. § 2254(b)(1).

29 **II. Order**

30 Based on the foregoing, Petitioner is ORDERED TO SHOW CAUSE why the
31 petition should not be dismissed for Petitioner's failure to exhaust state remedies. Within
32 thirty (30) days of the date of service of this order, Petitioner shall inform the Court what
33 claims, if any, have been presented to the California Supreme Court.

34 If Petitioner fails to respond to this order or fails to show cause why the petition

1 should not be dismissed, the undersigned will recommend dismissal of the petition
2 without prejudice for failure to exhaust state remedies.

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4 IT IS SO ORDERED.

5 Dated: February 15, 2018

1st Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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