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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FRANK R. CASTILLO,
Petitioner,
v.
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
CALIFORNIA,
Respondent.

Case No. 1:18-cv-00251-LJO-MJS (HC)
**ORDER TO SHOW CAUSE WHY THE
PETITION SHOULD NOT BE DISMISSED
FOR PETITIONER'S FAILURE TO
EXHAUST STATE COURT REMEDIES AND
FAILURE TO NAME A PROPER
RESPONDENT**
THIRTY (30) DAY DEADLINE
**CLERK TO SEND BLANK HABEAS
CORPUS FORM TO PETITIONER**

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 February 26, 2014 judgement of the Fresno County Superior Court. (ECF No. 2 at 1.)

I. Preliminary Review of Petition

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

1 petition "[i]f it plainly appears from the petition . . . that the petitioner is not entitled to
2 relief." Rule 4 of the Rules Governing § 2254 Cases; Hendricks v. Vasquez, 908 F.2d
3 490 (9th Cir. 1990). Otherwise, the Court will order Respondent to respond to the
4 petition. Rule 5 of the Rules Governing § 2254 Cases.

5 **II. Exhaustion Requirement**

6 A petitioner who is in state custody and wishes to collaterally challenge his
7 conviction by a petition for writ of habeas corpus must exhaust state judicial remedies.
8 28 U.S.C. § 2254(b)(1). The exhaustion doctrine is based on comity to the state court
9 and gives the state court the initial opportunity to correct the state's alleged constitutional
10 deprivations. Coleman v. Thompson, 501 U.S. 722, 731 (1991); Rose v. Lundy, 455 U.S.
11 509, 518 (1982); Buffalo v. Sunn, 854 F.2d 1158, 1163 (9th Cir. 1988).

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

20 Additionally, the petitioner must have specifically told the state court that he was
21 raising a federal constitutional claim. Duncan, 513 U.S. at 365-66; Lyons v. Crawford,
22 232 F.3d 666, 669 (9th Cir.2000), amended, 247 F.3d 904 (2001); Hiivala v. Wood, 195
23 F.3d 1098, 1106 (9th Cir.1999); Keating v. Hood, 133 F.3d 1240, 1241 (9th Cir.1998). In
24 Duncan, the United States Supreme Court reiterated the rule as follows:

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

1 federal rights, they must surely be alerted to the fact that the prisoners are
2 asserting claims under the United States Constitution. If a habeas
3 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.

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

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

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

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

15 Here, it is unclear from the petition whether Petitioner has presented his claims to
16 the highest state court, the California Supreme Court. It appears that he may have raised
17 some of his claims in a petition for writ of habeas corpus in the Fresno County Superior
18 Court. However, he does not state whether he also sought review of these claims in the
19 California Supreme Court. This court cannot proceed to the merits of the petition unless
20 the claims have first been presented to the California Supreme Court, whether on direct
21 appeal or by way of a petition for writ of habeas corpus.

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

1 **III. Proper Respondent**

2 Petitioner names the United States District Court for the Northern District of
3 California as the Respondent in this case.

4 A petitioner who is seeking habeas corpus relief under 28 U.S.C. § 2254 must
5 name the state officer having custody of him as the respondent to the petition. Habeas
6 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
8 having custody of an incarcerated petitioner is the warden of the prison in which the
9 petitioner is incarcerated because the warden has “day-to-day control over” the petitioner
10 and thus can produce the petitioner in court. Brittingham v. United States, 982 F.2d 378,
11 379 (9th Cir. 1992); Stanley, 21 F.3d at 360. A petitioner's failure to name a proper
12 respondent may require dismissal of his habeas petition for a failure to name a person
13 who can produce the petitioner in response to an order of the Court and thereby to
14 secure personal jurisdiction. See Smith v. Idaho, 392 F.3d 350, 355 n.3 (9th Cir. 2004).

15 Petitioner may cure this defect by preparing an amended petition naming as the
16 respondent the warden of the facility in which he is incarcerated. See In re Morris, 363
17 F.3d 891, 893–94 (9th Cir. 2004).

18 **IV. Order**

19 Based on the foregoing, Petitioner is ORDERED TO SHOW CAUSE why the
20 petition should not be dismissed for Petitioner’s failure to exhaust state remedies and
21 failure to name a proper respondent. Within thirty (30) days of the date of service of this
22 order, Petitioner shall file an amended petition naming a proper respondent and shall
23 therein inform the Court what claims, if any, have been presented to the California
24 Supreme Court.

25 If Petitioner fails to respond to this order and fails to show cause why the petition
26 should not be dismissed, the undersigned will recommend dismissal of the petition

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without prejudice for failure to exhaust state remedies and failure to name a proper respondent.

IT IS SO ORDERED.

Dated: March 7, 2018

1st Michael J. Seng
UNITED STATES MAGISTRATE JUDGE