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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOEY ROBERT RUIZ,) Case No.: 1:21-cv-00575-SKO (HC)
)
 Petitioner,) ORDER DIRECTING CLERK OF COURT TO
) ASSIGN DISTRICT JUDGE
 v.)
) FINDINGS AND RECOMMENDATION TO
) DISMISS PETITION
 UNNAMED,)
) [TWENTY-ONE DAY OBJECTION DEADLINE]
 Respondent.)
 _____)

Petitioner is a state prisoner proceeding *pro se* and *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner filed the instant petition on December 4, 2020, in the Northern District of California. On April 6, 2021, the case was transferred to the Eastern District and received in this Court. A preliminary screening of the petition reveals that the petition fails to present any cognizable grounds for relief, fails to name a proper respondent, and is completely unexhausted. Therefore, the Court will recommend the petition be **SUMMARILY DISMISSED**.

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

1 the district court . . .” Rule 4; O’Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990). The Advisory
2 Committee Notes to Rule 8 indicate that the Court may dismiss a petition for writ of habeas corpus,
3 either on its own motion under Rule 4, pursuant to the respondent’s motion to dismiss, or after an
4 answer to the petition has been filed. A petition for habeas corpus should not be dismissed without
5 leave to amend unless it appears that no tenable claim for relief can be pleaded were such leave
6 granted. Jarvis v. Nelson, 440 F.2d 13, 14 (9th Cir. 1971).

7 B. Failure to State a Claim

8 The basic scope of habeas corpus is prescribed by statute. Title 28 U.S.C. § 2254(a) states:

9 The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an
10 application for a writ of habeas corpus in behalf of a person in custody pursuant to a
11 judgment of a State court *only on the ground that he is in custody in violation of the
Constitution or laws or treaties of the United States.*

12 (emphasis added). See also Rule 1 to the Rules Governing Section 2254 Cases in the United States
13 District Court. The Supreme Court has held that “the essence of habeas corpus is an attack by a
14 person in custody upon the legality of that custody . . .” Preiser v. Rodriguez, 411 U.S. 475, 484
15 (1973).

16 In order to succeed in a petition pursuant to 28 U.S.C. § 2254, Petitioner must demonstrate that
17 the adjudication of his claim in state court

18 (1) resulted in a decision that was contrary to, or involved an unreasonable application
19 of, clearly established Federal law, as determined by the Supreme Court of the United
20 States; or (2) resulted in a decision that was based on an unreasonable determination of
the facts in light of the evidence presented in the State court proceeding.

21 28 U.S.C. § 2254(d)(1),(2).

22 In this case, Petitioner claims the parole board denied his parole in violation of California law.
23 Petitioner makes no claim that his custody violates the Constitution or Federal law, and he makes no
24 argument that a state court adjudicated his claim contrary to Supreme Court precedent. Thus,
25 Petitioner fails to present a cognizable federal claim.

26 Additionally, Rule 2(c) of the Rules Governing Section 2254 Cases requires that the petition:

- 27 (1) Specify all the grounds for relief available to the petitioner;
28 (2) State the facts supporting each ground;
(3) State the relief requested;

- 1 (4) Be printed, typewritten, or legibly handwritten; and
2 (5) Be signed under penalty of perjury by the petitioner or by a person authorized to sign it for
the petitioner under 28 U.S.C. § 2242.

3 Petitioner has failed to comply with Rule 2(c) by failing to adequately plead his grounds for
4 relief. He makes a conclusory allegation that the parole board violated state law, but he makes no
5 argument in support of his claim, nor does he provide any facts supporting his claim. Therefore,
6 Petitioner fails to state a claim for relief.

7 C. Exhaustion

8 Petitioner indicates he has not exhausted any of his claims. A petitioner in state custody who is
9 proceeding with a petition for writ of habeas corpus must exhaust state judicial remedies. 28 U.S.C. §
10 2254(b)(1). The exhaustion doctrine is based on comity to the state court and gives the state court the
11 initial opportunity to correct the state's alleged constitutional deprivations. Coleman v. Thompson,
12 501 U.S. 722, 731 (1991); Rose v. Lundy, 455 U.S. 509, 518 (1982). A petitioner can satisfy the
13 exhaustion requirement by providing the highest state court with a full and fair opportunity to consider
14 each claim before presenting it to the federal court. O'Sullivan v. Boerckel, 526 U.S. 838, 845 (1999);
15 Duncan v. Henry, 513 U.S. 364, 365 (1995); Picard v. Connor, 404 U.S. 270, 276 (1971).

16 Petitioner states that he has not sought further review of his claims in any higher state court.
17 He states he sought relief with respect to sentencing in the Kings County Superior Court, but he states
18 that he raised no grounds for relief and that there was no result. Since Petitioner has not sought relief
19 in the California Supreme Court, the Court cannot proceed to the merits of any claims. 28 U.S.C. §
20 2254(b)(1).

21 D. Failure to Name a Proper Respondent

22 Petitioner does not name a respondent in this action. A petitioner seeking habeas corpus relief
23 under 28 U.S.C. § 2254 must name the state officer having custody of him as the respondent to the
24 petition. Rule 2 (a) of the Rules Governing § 2254 Cases; Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894
25 (9th Cir. 1996); Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994). Normally, the
26 person having custody of an incarcerated petitioner is the warden of the prison in which the petitioner
27 is incarcerated because the warden has "day-to-day control over" the petitioner. Brittingham v. United
28 States, 982 F.2d 378, 379 (9th Cir. 1992); see also Stanley, 21 F.3d at 360. However, the chief officer

1 in charge of state penal institutions is also appropriate. Ortiz, 81 F.3d at 894; Stanley, 21 F.3d at 360.
2 Where a petitioner is on probation or parole, the proper respondent is his probation or parole officer
3 and the official in charge of the parole or probation agency or state correctional agency. Id.

4 Petitioner's failure to name a proper respondent requires dismissal of his habeas petition for
5 lack of jurisdiction. Stanley, 21 F.3d at 360; Olson v. California Adult Auth., 423 F.2d 1326, 1326
6 (9th Cir. 1970); see also Billiteri v. United States Bd. Of Parole, 541 F.2d 938, 948 (2nd Cir. 1976).
7 Normally, the Court would grant Petitioner an opportunity to cure this error, however, in light of the
8 other deficiencies noted above, the Court finds that this would be futile.

9 **II. ORDER**

10 IT IS HEREBY ORDERED that the Clerk of Court is DIRECTED to assign a district judge to
11 this case.

12 **III. RECOMMENDATION**

13 Based on the foregoing, the Court HEREBY RECOMMENDS that the habeas corpus petition
14 be SUMMARILY DISMISSED.

15 This Findings and Recommendation is submitted to the United States District Court Judge
16 assigned to this case, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304 of the
17 Local Rules of Practice for the United States District Court, Eastern District of California.
18 Within twenty-one (21) days after being served with a copy, Petitioner may file written objections
19 with the Court. Such a document should be captioned "Objections to Magistrate Judge's Findings and
20 Recommendation." The Court will then review the Magistrate Judge's ruling pursuant to 28 U.S.C. §
21 636 (b)(1)(C). Failure to file objections within the specified time may waive the right to appeal the
22 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

23
24 IT IS SO ORDERED.

25 Dated: April 7, 2021

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE